United States Court of Appeals for the Second Circuit



APPENDIX

75-7649

United States Court of Appeals

For the Second Circuit

MARVIN STERN.

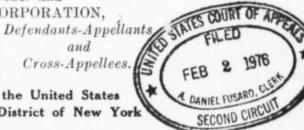
Plaintiff-Appellee and Cross-Appellant,

against

SATRA CORPORATION and SATRA CONSULTANT CORPORATION,

Cross-Appellees.

Appeal from a Judgment of the United States District Court for the Southern District of New York



JOINT APPENDIX

VOLUME II OF IV

Pages 359A to 738A

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O There is a difference of what, between \$7,500 and \$66,250 dollars; is that right?

A 12 versus 6 months, and something about they have to get it back and there is a limit. It became awful cute in my words, so I rejected it out of hand.

- Q Did you tell Mr. Oztemel that you thought it was cute?
- A I told him I accepted Alternative No. 1.

 MR. NILL: May I have an answer to my question,
 your Nonor?
 - A No, I didn't.
- O Did you tell that to Mr. Mott or Mr. Mermann?

 THE COURT: I will sustain the objection. I

 don't see what difference it makes. He had a right to

 accept without commenting and did accept without commenting.
- O This acceptance that you made, to whom was that directed?

. MR. HILL: Withdrawn.

n I had asked you what services you were supposed to perform.

THE COURT: May I see counsel?

(In the robing room.)

THE COURT: I don't want to cut you off from asking any questions that may be of value to you in relation

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don't understand why it is necessary to spend as much time as is being spent on the details of the plaintiff's understanding as, for example, what duties he is to perform under the agreement, which seems to me clearly specified what his duties are, when your defense is that he made misrepresentations to the defendants.

Could you please illuminate the situation for ...

MR. HILL: I will try, your Honor.

Dr. Stern's testimony is that he was to perform services for Satra. We have never leen able to find out what these services are. We consider the fact that, one, he didn't do anything in connection with the Kama River prohect, which will soon be in evidence, except wander around in Washington and --

THE COURT: Many people have to pay a lot of money for that stuff.

MR. HILL: That isn't what he is being paid to do, your Honor, and that will become clear.

THE COURT: It is in issue, you claim, what he was to do.

How does it come in issue?

MR. HILL: Our position is simply this, that

this contract was signed with this fellow and you will see this when you see the contract prepared by Mr. Ellison's partner, after August 31st. This fellow is being paid as a finder and the reason was he had represented to these people he could produce IBM, and the fact is he didn't produce 1BM, and the fact is that contract --

what services he was to perform, that's all right. It seems to me your view of the matter is going to have to be proven out of the mouths of your witnesses. The jury may believe them or disbelieve them and we can be here until hell freezes over, and I don't think you are going to get Dr. Stern to state, if that's what you're trying to do, that he made misrepresentations and he was to do anything other than he was to do.

MR. HILL: Your Honor, this all depends on whether this jury believes Dr. Stern. It does seem to me on cross-examination I am entitled to press him with respect to what his deal was.

THE COURT: All right, press him as to what his deal was. Don't let's grapple with it, and you've been shadow-boxing during the day.

MR. SIMON: Your Monor, you probably grasped some-

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about expenses, there is something I don't understand and that is whether the expenses are accumulated against revenues received --

THE COURT: Why don't you ask the question? If there is a different mathematical concept, why don't you ask that?

MR. HILL: Why don't we reserve that until the morning, your Honor?

> MR. HELLERSTEIN: I have no objection if you ask. (In open court.)

(Question read.)

Dr. Stern, as briefly as you can, would you tell us your understanding of the services that you were to perform under Alternative 1 of the document which is marked Plaintiff's C, the letter dated August 31st?

A I was to exert my best efforts to see that there would be an agreement reached between IBM, Stromberg and Satra. I was to continue in the discussions and negotiations between the parties.

After agreements between the client and Satra, since I was a partner in the venture here, it didn't describe specific actions I was to perform, lick if I were getting a salary to do this, this, this, but here I was to share in the revenues. Therefore, I was to exercise my

initiative to assist wherever called upon, wherever I was able, to maximize the sales and profits. In particular, I was to continue to work with Satra, in helping to understand the needs of a technology-oriented firm, or the needs of the customer, the Soviets, in the use of the products, if I were able.

And I would similarly be a communicator, the other way, help to explain why IBM had services Satra would be able to perform. Over and above this, Mr. Oztemel had made several suggestions to the effect that he wanted to introduce me to the Moscow scene to see if I could pick up some of that knowledge.

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O Did you communicate this understanding of your obligations to Mr. Oztemel?

THE COURT: What was the question?

MR. HILL: Did he communicate his understanding to Mr. Oztemel, your Honor.

A Not really. There was no specific discussion on the issue, other than his suggestion to me that he would like to introduce me to the Moscow scene.

And it is vour testimony, is it, sir, that in exchange for these services, you were to receive 50 percent of the gross revenues realized by Satra from its representation of IBM; is that correct?

A Yes.

O Did you, on August 30, have a view of what the potential gross revenues to Satra might be over the life of that proposal?

A I had the view.

O Did you communicate that view to Mr. Oztemel?

A Yes.

Q What did you tell Mr. Oztemel in that regard?

A I told him we should please continue to exert efforts to gain IBM as a client, we should go to the meetings, it was not a waste of our time because no matter how small the likelihood might be that we were successful,

if IBM were to go into the business, they would not go in for a small amount of money, they would only go in if they saw significant volume of sales. The other vardstick I had was that over the past six years IBM had worked itself up to something like \$100,000,000 annual volume in the rest of the Soviet bloc, and one would think they should equal that at least in the Soviets.

O A hundred million dollars on an annual basis meant what to Satra? You are the mathematician, Doctor Stern.

A Let me sav, that was the 100,000,000 reached at the end of six years.

O I thought you said a hundred million a year.

A A hundred million annually at the end of the sixth year. That began, you know, with nothing.

THE COURT: The question is, if IBM had sold a hundred million dollars the first year to the sixth year in the Soviet Union, how much would that have meant in your mind to Satra?

THE WITNESS: I represented that by the time they would be able to sell a hundred million dollars per year, they should get \$4,000,000 commission.

Of which you would get half, more or less, subject to this expense account?

Stern-cross

A		Half	on	the	current,	and	half	reduced	hy	the
schedule	on	the	futi	ire	earnings.					

O Did you have any discussion with Mr. Oztemel about dollars as to what the potential here was?

A Yes.

O What I am trying to get you to tell me, what did you say to him about your expectations in dollar volume, if anything?

A What I have just said. Should I go over that again?

O I didn't understand vou to have told me that you told that to Mr. Oztemel.

A Yes, that's what I said to Mr. Oztemel, yes, sir.

THE COURT: We will have to terminate for the

day, we regret of sorts, and I'll see you gentlemen at 10:00

o'clock in the morning. I think perhaps the jury need not

be ready until 10:15 in the morning. I believe I should

confer with counsel as to any matters that are outstanding.

MR. HILL: Your Honor asked yesterday for a set of our proposed special interrogatories. I would like to hand them up, if I may.

(Time noted: 4:30 p.m.)

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MARVIN STERN

v.

SATRA CORP. and SATRA CONSULTANT

April 3, 1974 10:05 a.m.

72 Civ. 143

(Trial resumed.)

(In the robing room.)

THE COURT: In an off-the-record discussion, the Court has questioned the parties, and particularly Mr. Hill, as to whether in the event of a favorable verdict for the plaintiff, he would be satisfied to leave the elucidation of any fact of the litigation of damages for any determination after the conclusion of this trial.

Mr. Hill has indicated that he is agreeable to doing so.

No determination has been made as to whether such facts should be determined by a jury or by the Court or possibly developed in the first instance by a magistrate of this Court as a referee.

MR. HELLERSTEIN: If your Honor please, one thing I would not want is to have a full-blown separate proceeding afterwards, with someone who is totally blank on what has happened in terms of the fact. I don't know what Mr. Hill envisions for this kind of proceeding or --

THE COURT: Perhaps we should come to grips with

of damages, I think there may be something to what Mr.

Hellerstein says, even from an objective point of view,

that the plaintiff has presented himself to this jury,

they have an idea of what he is like, and he has presented

himself to the Court, and I would suppose that in a question

of litigation of damages, which would depend so substantially

on what the jury thought plaintiff could do, he would have

to go through that process to some extent again.

MR. HILL: Would he, your Honor? Maybe I don't view the mitigation issue quite the same way your Honor does, but it seems to me if you decide the question of law, i.e., that we were entitled to have him mitigated, it seems to me the facts as to whether or not he did would not depend on much other than what did he earn.

THE COURT: I hope you are right, because that is simple, but I don't think it is that simple. It is a question of not only what he did earn but what he might have earned, or whether the opportunities for earnings were foreclosed.

MR. HELLERSTEIN: It seems to me there are a couple of parts to this problem. One part is the general question of whether there is any burden to mitigage at all in this kind of situation.

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THE COURT: It seems to me that is something we could clearly decide in a hurry. If there is an obligation to mitigate, then that's the end of it. I don't have a point of view at the moment, but I don't see any reason why by tomorrow morning, for example, you ought not be in a position to give me any authority you have on the subject, or even this afternoon, so I could ask my staff to look into it to help me reach a conclusion.

MR. HILL: We do refer at least to one Court of Appeals case, I believe.

THE COURT: In the request to charge?

MR. HILL: It's in the brief, your Honor.

MR. FISHER: We have contrary authority.

MR. HILL: I am sure you do.

THE COURT: Maybe you can give that to my staff

17 | now.

MR. HILL: We don't have our copy in here.

THE COURT: I may have it on the bench.

MR. HELLERSTEIN: I have your brief. I have it

here.

THE COURT: This is your brief?

MR. HILL: No, our brief, your Honor.

MR. HELLERSTEIN: We didn't address ourselves to that question, your Honor.

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THE COURT: Did you say you do not --

MR. HELLERSTEIN: We have some authority. I was involved in a similar question, only a different case. There was another point, which was whether Mr. Hill is entitled at all to bring up the point of mitigation.

I guess the third question is --

THE COURT: To bring up the title of mitigation at all?

MR. HELLERSTEIN: Yes, your Honor.

THE COURT: Because it hasn't been asserted before this point?

MR. HELLERSTEIN: That's right.

THE COURT: I think that would depend on my reading of the law as to whether it is a natural element of the law. If it is something inherent in this kind of a proposition, I don't think the plaintiffs have to be on notice.

Whether you would be prejudiced in the legal sense of the word, not having been notified before, in the way it altered the way you prepared the case, if there is such assertion, I would want to know it.

MR. HELLERSTEIN: It would be very difficult to argue prejudice, your Honor, so I think if there is not to be any proof here, I should withdraw that opposition.

THE COURT: That leaves us with two questions.

THE COURT: All right, you can let me know by this afternoon or something like that.

MR. HELLERSTEIN: If Mr. Hill wants a jury on that, I would like to stand on my comment that it it too late, and I think we would be prejudiced in terms of expense and burden.

THE COURT: I will consider that if he feels that way and I am not trying to pressure him.

Mow, what other quantions are left floating around?

MR. HELLERSTEIN: This whole series of questions that relate to damages.

Reading Mr. Hill's brief, I believe he makes
the point that these are law questions, and they are
questions of contract interpretation. For example, Mr.
Hill's cross-examination on whether supenses should be
carried over or not carried over, that's an issue.

Another issue is how the December 1973 agreement, which is not yet in evidence, in terms of its two types of monthly payments, should be treated. That's an issue in this case.

We would agree with him that these are essentially questions of contract interpretation and, therefore, ones for the Court to decide.

In our second submission to you yesterday, we had the entire question to be put to a jury. We find a great difficulty --

THE COURT: I would think it would be very hard for a jury to decide a question as hard as this one is.

It seems to me to be a question of law, although I am not saying the facts which are being developed are irrelevant. Since you are in agreement on that point, apparently, doesn't that sottle it?

MR. HELLERSTEIN: I want to be clear that we are.

MR. HILL: Your Honor, we are partly in agreement with the plaintiff, but we do want to make the point, and I wanted to come back to this, anyway, on whether or not the expenses were annual or cumulative. There are two parts to that issue: it has two aspects in this case.

The issue is whether or not there was, in fact, an agreement, as to whether the parties had agreed with respect to whether or not the expenses ought to be on an annual or cumulative basis.

THE COURT: Whether there was a meeting of the minds?

MR. HILL: Yes. And I think we will go further with that this morning.

I did want to raise with your Honor, and your

Honor will remember this discussion we had yesterday, when

we tried to ask this question --

THE COURT: Yes, I do. You asked about the four million.

MR. HILL: I thought I would raise it in here
and what I would propose to ask Dr. Stern is whether they
were cumulative or annual, and I would like to develop
that by simply asking him a question to the effect that
if there were accumulated four million dollars worth of
expenses over a four-year period, and you got a million
dollar fee in the fifth year, were any of those expenses,
either the actual or the cumulative expenses in the schedule
to be charged against that million-dollar figure?

That is all I want to ask him.

THE COURT: I proceeded yesterday on a mistaken assumption. I didn't understand the theory of your question, and on the basis of your explanation, I will not stand in the way of your asking.

MR.HILL: The second question, of course, on this point, as to what the contract meant in terms of what damages Mr. Stern might be entitled to, I suppose, is really a mixed question of fact and law. It can be dealt with by your HOnor in a lot of different ways, a special

question to the jury or as a part of the general charge,

I suppose. It does seem to be a mixed question.

MR. HELLERSTEIN: How would you want to do it? What do you want the jury to decide on that question, if anything?

MR. HILL: Our basic position is they shouldn't decide anything; not in this case. Maybe in the next case, if you are entitled to damages. That's when the issue is raised.

MR. HELLERSTEIN: Let's assume that the jury

finds that the contract is valid and enforceable and the state of there is no fraud. What then? Should the jury be asked anything more to decide?

MR. HILL: No.

MR. HELLERSTEIN: The rest of it, then --

MR. HILL: Either Judge Lasker or some other finder of fact after this case is over.

THE COURT: That's all right with me personally,
but Mr. Hellerstein seems to have expressed his reservations,
if not objection, to leaving some questions to another
jury, and why don't we postpone resolution of these
questions until 2:00 o'clock, at which time you have
decided whether you are agreeable -- let's put it this way
bluntly: Any questions other than the validity of the

contract and misrepresentation questions being tried to the Court, and, if so, we know where we stand. If not, we will have to consider how to treat it.

MR. HELLERSTEIN: May I raise one more problem?

When Mr. Hill finishes with Dr. Stern, assuming he will,

we would then propose to deal with the December 1973

agreement and put into evidence how much money has come

in to Satra. I would suppose if your Honor would try this

case, you might want to rule one way or the other, whether

the jury should hear this evidence of not.

I don't know if Mr. Hill is objecting on this, either, but if there is a problem, perhaps we should discuss it --

THE COURT: You mean if the jury is not to determine the question we are talking about this morning, damages, then --

MR. HELLERSTEIN: I don't care one way or the other.

THE COURT: Let's just ask Mr. Hill.

Would you intend to object?

MR. HILL: Yes, your Honor.

THE COURT: On what grounds?

MR. HILL: On the grounds that the '73 contract is not part of this case. On its face, it does not repre-

sent an extension of the '71 agreement and it seems to

me --

I can change my mind as I hope I have indicated -- but
I think I ruled Monday morning, when we talked about the
;73 contract in the robing room before we impaneled the
jury, that as I read the '73 contract there was at least
a factual question as to whether it was or was not within
the contemplation of the, let us call it, August 31st,
September 1st documents, that is, the proposal of Satra
as accepted in handwriting by Dr. Stern, and that I didn't
agree with the defendants that it had no part in the case.
That is my ruling on that.

The subordinate question that would then arise, even if that is true or knowing that that is true, reserving your rights to disagree with that ruling, are there any objections of an evidentiary nature to the introduction of the exhibit?

MR. HILL: None that would occur to me, your Honor.

THE COURT: . 11 right. I am not going to suggest anything.

MR. HELLERSTEIN: Then I would just proceed to put it in evidence.



case.

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THE COJRT: The case I have set up next week

is a maritime injury case for about \$5,000, or something,

which I am trying to settle this afternoon, and I think

I carve one out, but I don't want to make a career of this

MR. HILL: I understand that, your HOnor, but

I think this being Wednesday, I think it is not unreasonable
to conclude that there is a pretty good chance the case
will go over to next week.

THE COURT: Off the record.

(Discussion off the record.)

(In open court; jury present.)

MARVIN STERN, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. HILL:

of yesterday, when we were discussing the question of expenses and the expense schedule which is attached to Plaintiff's Exhibit C, the August 31st set of proposals.

I believe your testimony has been that that expense schedule, if you like, was to be applied on an annual rather than a cumulative basis, is that correct, sir?

A Yes.

Q And I asked you a couple of questions yesterday

that related to if there were a million dollars of expenses in the Year One, you wouldn't bear any share of those, and if there were a million dollars of expenses in two years, and subsequently a fee was received covered by the contract, that those expenses would not be charged against that fee if they had been incurred in an earlier year; is that right?

- A That's what you had asked, that's right.
- Q What was your enswer?
- A No.
- Q They would not be charged?
- A That's right.
- Q Let me just finish this off by asking you this question:

and there had been no revenues in the first three years, and a fee was received in the fourth year, then I take it that the schedule you have in front of you would only be applied up to the amount of the expenses set forth in that schedule; is that correct?

- A Yes.
- Q I am trying to make this clear so the jury understands it.

THE COURT: I am not sure that you have succeeded.

1	hpmch Stern-cross 319
2	MR. HILL: I don't think I have, either.
3	THE COURT: If you put it in terms of figures
4	and years
5	Q With that schedule in front of you, if you would
6	just assume this:
7	Assume that Satra and yourself had worked for
8	three years under the terms of that agreement, and there
9	was a million dollar fee received in the fourth year,
10	what would be the amount of the expenses under the
11	terms of that schedule that would be deducted from that
12	fee before you shared it? Can you tell us that?
13	A Yes, sir.
14	THE COURT: May I suggest so the jury can under-
15	stand this, they have a copy of the schedule in front
16	of them?
17	MR. HILL: Yes, sir, thank you.
18	THE COURT: And you can explain from the schedule.
19	THE WITNESS: Yes, sir.
20	THE COURT: Will you read the question, Mr.
21	Reporter?
22	(Question read.)
23	THE COURT: Referring to the schedule, will you
24	give us the answers, Dr. Stern?
25	A How much is received during the

Stern-cross

fourth year?

- Q A million dollars.
 - A How much is received during the third year?
 - Q Nothing.
 - A And during the second year?
- Q Nothing.
- A And the first year?
- Q Nothing.
- A My interpretation of the schedule is, during

the first year, no revenue, no expense reimbursement. During the second year, no expense, no revenue, no expense reimbursement. During the third year, no expense reimbursement.

During the fourth year, the aggregate revenue being \$1,000,000, the aggregate expense reimbursement during that year would be 100 plus 50 plus 25 plus 15, which I think adds up to 190,000.

THE COURT: In other words, the figures on the right-hand side of the schedule added together, for the first four years?

THE WITNESS: No, sir, not for the first four years. That is not what I said. For the first four increments received that year which added up to a million, because it's on an annual.

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2	- Inpinion		321
		THE COURT: The first four figures on	the right-
3	hand side	?	
4		THE WITNESS: Correct.	
5		THE COURT: Does the jury understand t	hat?
6		THE WITNESS: Sorry to argue.	
7		THE COURT: That's all right.	
Я	Q	Did there come a time, Dr. Stern, subs	equent to
9	the execu	tion of Plaintiff's Exhibit C, that an	attempt
10	was made	to draw a more formal document?	
11	. А	Yes.	
12	Q	And do you know who made that attempt?	
13		MR. HELLERSTEIN: May we approach the	side bar,
14	your Hono	?	
15		THE COURT: Yes.	
16		(At the side bar.)	
17		MR. HELLERSTEIN: Mr. Hill's point, as	I understand
18	it, is the	at evidence of dealings between the par	ties looking
19	to make a	more complete document are relevant on	the question
20	of whether	r or not there was an agreement. I this	nk that's
21	an entire	ly legal question assisting, whether or	not the
22	document	of August 31, which is the offer, and a	cceptance
23	of Septem	per 1 is a contract.	
24		If there is a contract, there is nothing	ng much to
25	this evide	ence because, as I understand the facts	, there was

pmch Stern-cross

never any communication between the parties of an intention to modify or change the agreement to which they agreed.

All this iditional evidence, I think, is quite irrelevant and could be prejudicial.

MR. HILL: As a matter of fact, almost based on Dr. Stern's testimony, he referred to his understanding of what that schedule meant. I think --

THE COURT: That can be interpreted as a cautious way of saying that --

MR. HILL: I understand, your HOnor, but we will offer into evidence this document which was prepared by Mr. Mott reflecting his understanding of what was agreed on August 31st, which does not coincide with what Dr. Stern tells us his understanding is.

or not there was a meeting of the minds on the 31st, what
the parties did thereafter, and I think, further than
that, your Honor, we will go on and offer into evidence
a document prepared by Mrs. Hauser, and there was a discussion
between Mr. Mott and Dr. Stern and Mrs. Hauser herself
on this very issue as to how these expenses were to be
dealt with.

It seems to me that goes right to the issue that

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THE COURT: Ladies and gentlemen, as you can see, there was a discussion at the side bar with respect to the question Mr. Hill asked. I am going to allow him to proceed with questions on this line, but I want to tell you that the sole purpose of the information that you may get in regard to discussions after September 1st is for you to determine and assess whether you believe that the parties were in agreement with regard to the documents of August 31st, Plaintiff's Exhibit C that you have there --

Isn't that C?

MR. HILL: Yes, Exhibit C.

THE COURT: It is for illumination purposes only. You are or concerned whether they reached another agreement.

THE WITNESS: If I understand, I was asked was there an attempt to draw up a more formal representation of the agreement that we had. If that's my understanding, then the answer is yes, and to the best of my recollection, Hanno Mott made such an attempt, something like September the 3rd.

- Q Right after the August 31st agreement was signed by Mr. Oztemel?
 - A Are you asking me something?

A That is correct.

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	380 A									
.1	hpmch Stern-cross 326									
2	MR. HILL: Your Honor, I will offer at this									
3	time Plaintiff's Z.									
4	THE COURT: Including the notations?									
5	MR. HILL: Yes, including the notations.									
6	MR. HELLERSTEIN: If your Honor please, I think									
7	there is no relevance to this whatever. This is an									
8	attempt by Mr. Mott to remodify the agreement and an objection									
9	by Dr. Stern to any remodification.									
10	THE COURT: May I see the decument?									
11	MR. HILL: Yes, your Honor.									
12	(Manded to the Court.)									
13	MR. HELLERSTEIN: May I say one word more, your									
14	Honor? Perhaps if the conversations that come out of									
15	this might lay a foundation for Mr. Hill's									
16	MR. HILL: Your Monor, I simply offered it at									
17	this time so the jury can have it in front of them while									
18	Dr. Stern relates to us the conversations he had.									
19	THE COURT: I think perhaps a fuller foundation									
20	would be in order, and then if you want to ask are you									
21	going to question about the document, itself?									
22	MR. HILL: When he got this, how he came to put									
23	the notation on it, and									
24	THE COURT: Let's get this out of the way and									

then I will rule on the offer.

1	hpmch Stern-cross 327
2	Q Dr. Stern, after you got what is now Plaintiff's
3	Z for identification, did you have a discussion with Mr.
4	Mott about the content of that document?
5	A Yes.
6	Q How many discussions did you have?
7	A One, to my knowledge.
8	Q Where did you have that discussion?
9	A In his office.
10	Q Had you placed the writings which appear on
11	Plaintiff's Z on that document before you went to have that
12	ronversation with Mr. Wett?
13	A Yes.
14	Q Had you discussed the content of that document
15	with anybody else prior to going to see Mr. Mott?
16	A No, sir.
17	Q Would you tell us what your discussion was with
18	Mr. Mott, what he said to you and what you said to him?
19	A I said to him that in reviewing the document, I
20	found many things there that were not elements of the
21	agreement we had, and perhaps he was not acting as an im-
22	partial attorney in an effort to put in a formal form an
23	agreement that had already been entered into, and he was
24	acting as an adversary, and rather than continue this
25	nonsense, I said, why don't we bring in an outside attorney,

Stern-cross

take the agreement we have and put it in formal form without what seemed to me to be an attempt to renegotiate an agreement which now we have signed off.

- Q Did you specify to Mr. Mott -MR. HILL: Withdrawn.
- Q Did you tell Mr. Mott at this meeting in what respects his draft, Plaintiff's Exhibit Z for identification, departed from the agreement that you had reached with Mr. Oztemel on the 31st?
 - A Yes, in some respects, not all.
- Q Would you tall us what you tall him, as best you can recall?

A Yes. I said, "Hanno, you are an attorney; I'm not. The attempt here to me seems to be rather cute."

Exceptes I gave were, for instance, in here he departed from the agreement of August 31, which has an expense reimbursement schedule applied annually, done in an incremental form, and here he inserts, instead of an incremental form, he adds that there is an annual minimum expenses of \$100,000, and I notice notes I have in the margin here, "N-o, "exclamation point, "not according to agreement." Things like that.

Q When you said this to Mr. Mott, what did Mr. Mott say to you, sir?

2 A

A He attempted to negotiate. He said, "Well, whether it's according to the agreement or not, don't you think we deserve it?"

I said, "You're acting as an adversary. We're here only to consider formalizing an agreement which we have, after negotiations. I want you to consider bringing in an outside attorney, an impartial one. We have a joint venture relationship. We are not to be adversaries."

That is what he said and that is what I said.

- Q Did Mr. Mott say anything to you, in words or substance, in which he said, "Dr. Stern, you and Satra are supposed to be 50-50 partners and therefore you ought to share expenses the same way you share profits"?
 - A Did he say that to me?
 - O Yes, sir.
 - A No, sir.
 - Q Were any other subjects discussed?
- A No. He took personal offense in my asking to bring in -- that he find an outside impartial attorney.

 He said he was an attorney and that is good enough for us.
- Q Did Mr. Mott, in words or substance, acknowledge to you that he was changing the August 31st agreement?
- A When I called his attention to certain of the items in here, yes.

Q What about this question on the expenses? Did he acknowledge to you that, insofar at these expenses were concerned, that he was changing the August 31st agreement?

A He introduced that as being only fair and equitable, even though it was not so specified in the original agreement.

Q Had you had a discussion with Mr. Mott when the schedule to Plaintiff's Exhibit C, that is, the lugust 21st letter was prepared?

Ment schedule, as I have testified, occurred in Mr. Mott's attempt to add modifications to the August 25th document, which had been agreed on by Mr. Oztemel and myself over the phone on August 25th. Mr. Mott and Mr. Hermann, aurine the morning of the 31st, made an effort to introduce that expense reimbursement schedule, and that is where we didn't agree in the deposition you read yesterday, and it was in the afternoon that the new document of August the 31st was put together and that expense reimbursement schedule was added.

Q All I asked you was, did you discuss that expense reimbursement schedule as part of Plaintiff's Exhibit Z with Mr. Mott on the 31st. Your answer to that is yes?

A Yes

THE COURT: I understand what the answer was, but I want to be sure I understand the question.

You are asking whether they discussed it on August 31st and not at the later meeting?

MR. HILL: I think his testimony is, your Honor,
he had a discussion with Mr. Mott when he got this draft
about the expense reimbursement subject and he also had already
discussed it with him when it wast into the --

THE WITNESS: That's not what I said. That's

THE COURT: Wait a minute, Doctor. Don't get so excited.

I also understood that on SEptember 3rd, or whatever day it was, that you must with Mr. Most to go over this proposed document, Exhibit 2, you did talk about expredeductions there because you told him you disagreed with the proposal.

THE WITNESS: That's correct.

THE COURT: In addition to that, as Mr. Hill

I thought had just brought out, you and Mr. Mott and maybe
others also discussed the question of expense reimbursement
on August 31st, and in particular the schedule that was
attached?

THE WITNESS: May I -- this last thing. We discussed it in the morning of the 31st, applicable to the earlier agreement. It happens they added it to the August 31st agreement. There was no discussion at the time of them having added it to the August 31st agreement.

I merely accepted it as is.

THE COURT: That's the schedule itself?
THE WITNESS: That's right.

O Discussions with respect to expense reinburger occurred; did they not, on both on or about September 3rd

MR. HEMLERSTEIN: I object to the form of the question. Dr. Stern has been trying to be very specific as to precisely what was discussed, and a question like this is much adding.

to bring out. If he is trying to bring out only if there were discussions of expenses on those days, but we are correct in assuming, are we not, there were discussions by you, Mr. Mott, on September 3rd of the expense question, and discussions on August 31st by you and the Satra people about the expense question?

THE WITNESS: That's right.

THE COURT: If Mr. Hellerstein wants to clarify

THE COURT: First will you tell us on what occasion you discussed it with him?

MR. HILL: I'm sorry. I thought that was in my earlier question.

Q I am referring, Dr. Stern, so we are clear, to the discussion that took place on or about September 3rd.

A Yes, and my discussion was, this sentence at the end of Paragraph B speaks about expenses which refer to -Sentence No. 1 says your compensation, and so on and so forth, "after deduction of expenses on an annual basis

That meant to me that hereafter, any mention of reimbursement of expenses referred to the manner specifically specified, namely, after deduction of expenses on an angual basis as per accorded somidule.

- Q Is this what you said to Mr. Mott?
- A Yes, sir.
- Q What did Mr. Mott say to you?
- A He said, "Yes, that's what it says, but after all, is that fair?"
 - Q What did you say to that?
 - A "Go to hell."
- Q Let me draw your attention to Paragraph C, Dr. Stern, and I will read the first sentence of Paragraph C,

2 if I may:

"All expenses for the project will be advanced by Satra, will be recouped out of earnings, if any, including your incidental expenses which will not include amounts contributable to your commuting from Los Angeles to New York."

Did you discuss that sentence with Mr. Mott in your meeting of the 3rd?

- A Yes.
- Q Can you tell us what you said?
- A My anderstanding of Test of the Cara as follows:

If there are expenses to be laid out for the project, the question as to where that money was to come from is answered here, namely, Satra would advance those expenses, and relative to the rases we had discussed, 40 they get reimbursed against actual expenses incurred? No. Their recoupment would only come out of gross revenues according to a predetermined expense reimbursement schedule as a function of gross revenues. This was merely a corroboration of that, but specification that I would not put up the expenses. They would.

But the manner of recoupment out of earnings referred to the explanation in Paragraph B above, and illustrated in the expense schedule attached. What else

Paragraph C. said, that my incidental expenses, not salaries -- in fact, the fact I wouldhave to have an apartment in New York, I have to commute, those they would not incur. Those I would.

All others, they would advance the money, they would get it out of revenues as specified here very clearly and as shown in the schedule.

- Q Did you tell all of this to Mr. Mott?
- A Yes, sir, because I couldn't understand why -in fact, I at 1, "You are an attorney. We have an agreement.
 The link hash't can been any or it. "The land hash't can been any or it."
- Q Did you use the word "renege" with Mr. Mott on September 3rd?
 - A On, no. There was at "reader."

Oztemel had reneged before on other agreements, but here we had one which was signed and the ink wasn't even dry on it, and the attorney was making an effort, not to formalize, but to renegotiate it.

Q There was a difference in your mind, was there, between reneging and renegotiating?

MR. HELLERSTEIN: I suppose I should object.

THE COURT: I don't know whether you should or

1	hpmch	Stern-cross	337
2	not, but I think the a	answer is clear.	
3	THE WITNESS	There was an effort at r	enegotiation
4	I didn't try to renego	otiate.	
5	THE COURT:	I take it renegotiate is a	n open
6	attempt to change?		
7	THE WITNESS	: Yes, sir.	
8	Q What did Mr	. Mott say to you after you	had said
9	all this to him?		
10	A He was week	t and he charged out of his	room.
11	Q Did he say	anything before he charged?	
12	A No, sir.		
13	Q He made no	response to this statement	that you
14	made?		
15	A Not to my r	ecollection.	
16	Q What heppe.	ed thereafter with respect	to Plain
17	Exhibit Z for identif	ication?	
18	THE COURT:	That's Mr. Mott's proposal	L?
19	MR. HILL:	Yes, your Honor.	
20	THE COURT:	You had better specify for	the record
21	and for the witness.	There is an Exhibit Z and	an
22	Exhibit C.		
20	A What happen	ned next?	
24	Q Yes, sir.		
25	A Nothing imm	mediately. I'm not sure I	know what

2 you're asking.

Q When was the next time there was a discussion about Plaintiff's Exhibit Z for identification which you were a party to?

THE COURT: If there was one.

- Q If there was such a discussion.
- "Now that we've been to Moscow with IBM and things are going along so very wall, derit out think we ought to have a cleaned up version of our agreement which, after all, was in the form of an offer of a touble of aluernatives and things like that. Why don't we have it put into final form?" He said it was difficult to do it in house, and I said, "Do you recommend, should I not get an attorney of my own, in outside one, to sit down with Hanno and work out a cleaned up version?"
 - Q Is that all you said to Mr. Oztemel?
 - A On that issue, yes, sir.
 - Q Did you report to Mr. Oztemel what had occurred at your conversation with Mr. Mott, on or around September 3rd, in connection with Plaintiff's Exhibit 2?
 - A No.
 - Q You never reported that to Mr. Oztemel at any time?

A I reported it in a positive way, that I thought it was necessary to introduce an outside attorney to take the agreement we had and to put in a more formal way.

That's all. I didn't go to Mr. Oztemel and say, "Mr. Mott is chiseling," or things like that. No. I merely came in with a positive suggestion.

Q Did you ever tell Mr. Mott you thought he was chiseling?

MR. HELLERSTEIN: If your Honor please, I think we are going way beyond any legitimate bounds of --

MR. MILL: 1 cathdraw it.

mir comma. Castaines.

Q After you had this conversation with Mr. Oztemel what happened?

- A He said, "Oh, sure."
 - Q Then what happened?

MR. HELLERSTEIN: If your Honor please, I don't see that this has any relevance at all to whether or not the August 31st contract was a contract.

THE COURT: I will sustain the objection. If the offer is merely to prove that there were discussions about him bringing about a more formal version, is that is what you are offering to prove, Mr. Hill, I rule that that is irrelevant. The actual discussions with parties --

1	hpmch Stern-cross 340									
2	Let's go to the side bar.									
3	(At the side bar.)									
4	THE COURT: I don't think it proves anything if									
5	there were discussions about trying to bring about what									
6	Dr. Stern calls a more formalized or cleaned-up agreement.									
7	That document, in my opinion, warrants an inference that									
8	there was not a meeting of the minds.									
9	MR. HILL: I would agree with that, your Honor.									
10	THE COURT: What are you truing to bring out?									
11	MR. HILE: I am trying to point out that two									
12	lasyers, ifyos like well, Tolayli say and different .									
13	people, Mr. Stern and Mr. Mott, both prepared documents.									
14	THE COURT: Stern isn't a lawyer, is he?									
15	MR. HELLERSTEIN: No. He didn't prepare the									
16	August 31st document.									
17	MR. HILL: Who did?									
18	MR. HELLERSTEIN: Mott.									
19	MR. HILL: He didn't.									
20	MR. HELLERSTEIN: That's Stern's testimony.									
21	MR. HILL: I don't care about Stern's testimony.									
22	THE COURT: That's the only thing on the record									
23	so far.									
24	MR. HILL: What the documents represent are the									
25	attempts of two different people to prepare what their									

THE COURT: I just want to know what your position

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is.

MR. HELLERSTEIN: The same.

MR. HILL: It seems to me I would cross-examine as to these subjects, the business of holding monies in the trust and a separate bank account and the like.

MR. HELLERSTEIN: I can't see that that is the basis --

THE COURT: I know whatyou will get there. You can prove to the jury when you go to a lawyer, and you try to make a more formal agreement, then introduce all serts of antequards which layers are supposite. Note dish's layers are supposite, but dish's layers and about, and I really don't think that is going to cast any light on anything for the jury.

I will allow you to question whether he went to a lawyer and about the substantive provisions of this agreement, but not about these, only because I think it is a waste of time.

MR. HELLERSTEIN: Wouldn't that be a way of getting documents into evidence that don't belong into evidence?

THE COURT: I'm not sure that it doesn't belong in evidence as evidence of the plaintiff's belief of what the other agreement consisted of. He is doing a pretty good job of establishing, I think, Mr. Hellerstein, that he damn well knows what a disagreement meant, and

rest is privileged with the attorney-client relationship and Mr. Hill knows that.

THE COURT: That's a neat question, but at the moment I will sustain the objection.

Q How many visits did you have with Mrs. Hauser about the subject to which you had reference, namely, the drafting of a cleaned-up agreement?

MR. HELLERSTEIN: If your Honor please, I think what Mr. Hill is doing is highly improper.

He knows as well as I and every one that the lawyer-client privilege extends to the conversation, and enforces to get out repeated conversation, In Televine at all, is a backhand way of getting into something he knows is not proper.

indicated I will allow questioning with regard to the product of the discussion, but I won't allow you to question the witness with regard to his contacts with his attorney.

MR. HILL: I would like to offer into evidence Plaintiff's Exhibit Z for identification, which is the Mott draft.

THE COURT: I now rule it is admitted into evidence.

Q I show you a document which is identified as

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(handing).

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

THE COURT: Do you know what it is?

THE WITNESS: It is not in the form that I think

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I have seen it, but I believe it is a draft that must have been prepared by Rita Hauser.

THE COURT: Rita Hauser was the attorney that you consulted?

THE WITNESS: That's right.

O So that there will be no confusion, Doctor Stern,

I am now showing you what I believe to be the original. Is
that what you saw?

A Yes, it is.

O Did Mrs. Hauser prepare this document? I am not asking you what the discussions were. I'm going to ask you if Mrs. Hauser prepared that document after discussions with you, if you know.

A I sent her a letter and she prepared that document based on that and perhaps a telephone discussion.

O Let me ask you to look at that document.

(Pause.)

MR. HILL: At this point, your Honor, I want to read from it, so I will have to offer it at this point. I do offer Plaintiff's Exhibit XX.

THE COURT: Mr. Hellerstein?

MR. HELLERSTEIN: Let it go in. Let's get it over with.

THE COURT: I will admit the document for the

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Stern-cross

nurpose of questioning the witness as to what his understanding of his agreement with the doctor was. This is what I
understand is your purpose.

MR. HILL: Yes.

THE COURT: I want the jury to understand that
the sole purpose of allowing this draft be put before you
is so that Mr. Hill can ask Doctor Stern certain questions as
to how what is in the draft relates to what Doctor Stern
understood his agreement with Satra to be.

(Plaintiff's Exhibit XX for identification was received in evidence.)

MR. HILL: At this point, your Honor, may I distribute copies? I'm not going to ask the jury to read all of this, but so that they can follow the portions I would like to read.

THE COURT: All right.

(Pause.)

THE COURT: Ladies and gentlemen, don't attempt to read that. Mr. Hill will ask certain questions and he will refer you to specific portions.

MR. HILL: I will refer them to specific portions of the document.

O Before I do that, Doctor Stern, before I read the portion that I would like to read, did you ever have a dis-

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1	4jgd Stern-cross
2	cussion with respect to this document with Mr. Mott?
3	A I never discussed the substance of it. I may
4	have at one time or another asked when are they going to
5	respond to Rita's draft, that's all.
6	Q Do you recall a response from Mr. Mott to that
7	kind of a question?
8	A He said something like that "they are studying
9	it."
10	O Did Mr. Mott tell you that he had met with
11	Mrs. Hauser?
12	A Mrs. Hauser had told me that and possibly
13	Mr. Mott had also. I'm not sure.
14	O Do you recall what Mr. Mott said? Do you have
15	any recollection now of Mr. Mott reporting back to you as
16	to his conversation with Mrs. Hauser and what was said at
17	that conversation
18	A Oh, no. I had an attorney in there and I
19	stayed out.
20	O Do you recall hearing from Mr. Mott or anybody
21	in the Satra organization that the document which you have
22	before you, namely Plaintiff's Exhibit XX, Mrs. Hauser's
23	draft, I'll call it for purposes of identifying it, did not
24	reflect the agreement of August 31st?

MR. HELLERSTEIN: I'm sorry. My mind wandered.

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both parties to enter into the IBM agreements and in advising both Consultant and IBM as to the needs of the USSR for data processing and other similar equipment and as to the technical capability and resources of the USSR, and whereas, Consultant and Stern wished to provide for Stern's share of the commission to be paid by IBM to Consultant as aforementioned as compensation for Stern's aforesaid activities..."

O Let me ask you this, Doctor Stern. Did you read those paragraphs, if you recall, at or about the time you received this document?

A Yes.

Ω Do those two paragraphs reflect, first, the services that you performed in connection with the agreement between Satra and IBM?

A They reflect what I consider to be the legal language to represent what I thought I was supposed to be doing. I am not a legal expert.

And the paragraph that refers to commissions, the second paragraph I refer to, is that a description of what you were being paid for?

A I must say that I am not a legal expert. I don't know how to answer you.

Let's turn to another subject, then, Doctor Stern.

Up to August 31st, other than the conversation you referred to yesterday with Mr. Stafford on or about the 10th of August, did vou ever advise IBM, IBM or any of its employees, of the nature of your relationship with Satra?

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A Oh, ves.

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Q Who?

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Z Mr. Stafford on August 10th. In identifying myself I told him I come from technology industry. I am not in the trading area, I was a consultant to Satra on the Kama River project.

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O That's all you told Stafford on the 10th?

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A As far as my relationship with Satra.

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O Did you ever tell Mr. Stafford or anyone else at IBM that you had become a 50-50 partner with Satra prior to August 31?

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A No.

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O Did you ever tell anybody at IBM that you were a joint venturer with Satra --

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A Yes.

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? -- prior to August 31?

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A No.

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Did you finish?

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No. The confusion here --

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THE COURT: Before August 31st you did not make

any such statement?

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THE WITNESS: That's right. I'm sorry.

Q Let's turn to another subject, Doctor Stern.

Did you ever tell anyone at Satra at any time that they should stay away from IBM?

A Let me have the dates.

O At any time.

A In two specific contexts the words "stay away" need some explanation. But with an explanation of the specific contexts, yes.

Now would vou tell us each one of those incidents and who said what to whom?

A Yes, sir.

On something like September 10th or 11th -
I'm sorry, it must be September 10th because the 11th is

Saturday -- I was in Los Angeles. I received a call from

Mr. Giffen. Whereas Mr. Oztemel had recently left for

Moscow, Mr. Giffen identified that he was running the Satra

offices, he was going to negotiate the agreement with IBM.

THE COURT: Did he say so to you?

THE WITNESS: Yes, sir.

A (Continuing) I reminded Mr. Giffen that he had met Mr. Stafford once, on September 3rd, that's all. I reminded him that I had had a series of meetings with IBM

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together with Mr. Oztemel and from September 3rd through
September 8th I had many discussions with IBM which culminated
in a luncheon on September 8th with Mr. Stafford where we
had reached an agreement on four percent, that this was
going on beautifully, why does he want to introduce a new
face and interfere, "Is something wrong with the way it is
going on?"

His answer was he was now running the Satra offices.

I said, "Please, Jim. It is going beautifully. Stay away."

Q What happened? Did he stay away?

A I have no specific knowledge of that. I would hope so.

O But you don't know?

A. I can suspect as a result of other actions, but I don't have any hard information. You know, how do I answer that?

THE COURT: That's the way you answer that.

O Either you know or you don't know.

A I have not heard of his having done it, but he may have. I don't know. I was in L.A.

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THE COURT: All right.

0 What about the second incident?

THE COURT: The second occasion.

A The second occasion. On the morning of September 22nd, whereas both Mr. Oztemel and Mr. Giffen had been in Moscow for a week or more, I had done all the negotiating alone on behalf of Satra. Hanno Mott had been away also. I had done all the negotiating with the IBM attorneys.

Towards the end of the final, September 22nd, agreement between IBM and Satra, I got IBM to sign it; I delivered the signed agreement to Satra, to Mr. Schloss.

He reviewed it with Mr. Mott, who had just come back to the office the morning of September 22nd. They both came to me and discussed some words in the agreement for interpretation. After that, they raised what they considered to be a significant issue, namely:

I had gotten the agreement from IBM to be signed in the name of the Satra Corporation. They asked me why did I do that. I said that what we were offering IBM is consulting and finance, barter, what-have-you, which involves activities of the Satra Consultant and the Satra Trading divisions or subsidiaries; I therefore had advised IBM to have their agreement with Satra itself to encompass all the efforts necessary by the various subsidiaries.

Mr. Mott said it's got to be changed in the name

of Satra Consultant rather than the parent. I said, "Well,

would you explain to me why?"

would like some assurance whv."

He gave me reasons which I couldn't understand, whereupon I explained to Mr. Mott, I said, "Look. In the negotiation between Satra and myself I deplored your manner of negotiating. I found it not overly honorable. I am concerned. I want to make sure we treat IBM correctly. Please, before an effort is made to get IBM to change, I

I was not given any assurance why, so I settled with him in the following way. I said: "All right. If you will write a guarantee for IBM such that if IBM changes the agreement so that it reads in the name of Satra Consultant only, I want you to give them a guarantee that Satra would make sure that all the other functions would act," that until then I did not want to introduce the issue.

Once that was resolved Mr. Mott said yes, he would exercise such a quarantee.

I raised the phone. I spoke to the IBM attorney.

I discussed it with h.m. I said, "If Satra gives you a guarantee, would you be willing to change to Satra Consultant?"

He said yes. I said, "Fine. Hanno Mott will work this out with you."

Until that, I was inhibiting the asking of the

change until the assurance of this kind of a guarantee.

Those are the only issues.

THE COURT: On this second occasion I gather that you inhibited it, as you sav, but you didn't in so many words say "stay out."

THE WITNESS: No. I had been asked to phone them, and I said, "No, I won't phone until" --

THE COURT: Just a minute. The question way back was whether you had ever told anybody at Satra to stay out of or stay away from IBM, and you said twice that you would like to explain. On the first occasion you indicated that you actually used those words.

THE WITNESS: Yes, sir.

THE COURT: On the second occasion, as I understand it, you admit, or what you have said is that you restrained and inhibited but you did not actually use the words.

THE WITNESS: No. What I did in the second instance, I said I would not "phone the IBM attorney and introduce you."

THE COURT: All right. Thank you.

BY MR. HILL:

- O Then you gave him the reasons which you described?
- A That's right.

Stern-cross

	Ω	I	take	it	then	it i	s fa	air t	o say	, Doct	tor St	tern,
that	these	are	the	onl	y two	ins	tano	ces.	You i	never	told	
Mr. N	Mott pr	rior	to	this	occa	asion	to	stay	away	from	IBM?	

A Oh, no.

O Doctor Stern, did you ever say in words or substance to anyone in the Satra organization that if Mr. Oztemel didn't sign the agreement, Plaintiff's Exhibit C, the August 31 agreement, that there would be no deal with IBM?

A No.

O Did you ever in words or substance say to anyone in the Satra organization that if he didn't sign that agreement with you, you would blow the IBM deal out of the water?

A No.

O Did you ever in words or substance make a statement to anyone in the Satra organization that if the August 31 contract with you was not signed that you would see to it that IBM did not deal with Satra?

A No.

O Did you ever say to anybody at Satra that you could influence IBM to sign a deal with Satra?

A No.

O Do you remember Plaintiff's Exhibit B which bears the date August 25? That's the piece of paper that

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you took back to Los Angeles with you. You testified at some length about that document.

A Yes.

In an effort to shorten this, if I asked you the same series of questions which I just asked you with respect to making statements to people in Satra about what you would do with respect to the IBM deal, if I asked you that same series of questions with respect to Exhibit B, did you ever make any of those statements in connection with that document?

A No, sir.

O Let's go to the IBM agreement which is in evidence, the first one that is signed, Plaintiff's Exhibit II, and then we have, I guess, Plaintiff's Exhibit I, which is the one with Satra Consultant that you just told us about (indicating).

With those in front of you, let me ask you this, Doctor Stern. Did Satra have a form of consulting agreement that they used?

A Yes

Q And when you went to IBM to discuss the terms of this agreement, did you have the form with you?

A No. I had actually given the form to

Mr. Stafford in one of our early discussions by September 8th.

O Now, the contract as executed, would it be fair

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Stern-cross

to say that it is basically not too dissimilar from the standard Satra form?

A It has many similarities. There are some, you know, changes which are peculiar to the way IBM likes to do business.

- Q And there are changes in there that go to identify IBM and its equipment and the like?
- A And the way they like to do business.
- O And it is this agreement that you tell us you negotiated really in its totality, that you were the fellow from Satra who did this?

A Well, that's not --

THE COURT: All right. Then what is your position?

THE WITNESS: My words are the following: on September 17th IBM delivered to us a letter of intent --

O Which is in evidence.

A Which is in evidence, which was to be a finalized agreement within about a week.

The IBM attorney who had the early version of the normal Satra form had the September 17th letter of intent, was knowledgeable about the ways of IBM, he came up with an initial draft of the September 22 document here. I had some discussions with him while he was coming up with it and we

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Stern-cross

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made some minor modifications as it went along.

Have I answered you now?

THE COURT: No, I don't think you answered it entirely. What I believe Mr. Hill is asking you is whether it is your position that you were the sole person from Satra who worked on the framing of this document?

THE WITNESS: Yes, sir, yes.

(Continued on next page.)

- 11	
	hpd Stern-cross 361
:	Q Prior to August 31, did anybody in the Satra
	organization, if you know, have any contact with IBM in con-
	nection with negotiating the agreement?
	A I have been advised that they had made an effort
;	some years earlier and
	O I don't want to interrupt. What I am talking
3	about is in that period between August 6th when Stafford

A To my knowledge, I was the sole one from the Satra side.

called you and the contract was signed. I'm sorry.

O Subsequent to August 31st, Giffen attended at least one meeting, did he?

A Yes, after August 31st.

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O Between August 31st and the 22nd, at or about the time the final agreement was signed, was that the only meeting he attended or did he attend more meetings?

A I know specifically the first one he attended was in Mr. Oztemel's office September the 3rd, and he was at the meeting at Mr. Witham's office September 17, where we received the letter of intent.

Q What about Mr. Mott, did he ever appear on the scene at any of these meetings with IBM prior to --

A No, sir.

As far as you know, nobody else from Satra, is

that right?

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A That's right.

O Let's move along now, Doctor Stern, to another subject.

There came a time subsequent to the execution of the agreement with IBM, when Mr. Oztemel travelled to Moscow and there was discussion about your going to Moscow, was there not?

A Yes.

0 When was that, more or less?

A Earlier in the discussions with IBM, Mr. Oztemel had said that were we to get IBM as a client, he would want me to go to Moscow with Mr. Stafford on the initial visit and over a period of time he would want me to be introduced to the Moscow scene.

O Why don't you take us up to the point of the discussion where there was an immediate trip to Moscow in the fall of 1971?

A In order to make this trip a possibility,

Mr. Giffen wrote a letter to the State Department to get me
a passport in a nurry, and they also did something with the
Soviet Embassy to get me the visa. And then, Mr. Stafford
and I went to Moscow. I'm not sure now what you want.

O Before going to Moscow, had you ever been told

by anybody in the Satra organization that you were not to go to Moscow?

A Yes.

0 Who told you that and where were you when you were so told?

A There were two specific instances. After the discussion with Mr. Giffen by phone on September the 10th, where I said the negotiations have already gone so well with IBM, please leave them alone, I received a call from Dr. Proehl in L.A. He wanted to meet with me urgently, and we had a meeting and he said Mr. Giffen had phoned me to relate to me that I was not going to Moscow. I said, "But, Mr. Oztemel said I should." Mr. Proehl said, "Why don't you talk to Schloss and resolve it?"

I went to New York to discuss it with Mr. Schloss, to discuss it with Mr. Giffen and it was resolved I was going to go to Moscow. That was over. The next I knew, Mr. Giffen went to Moscow himself, was with Mr. Oztemel in Moscow and interestingly enough, the night of September 21, when I was at IBM, holding the agreement that IBM was going to sign on September 22nd, I got a call from Mr. Schloss, who said he had heard from Mr. Oztemel in Moscow, and I should not go together with Mr. Stafford to Moscow. I relayed this information to Mr. Stafford. He

Stern-cross

picked up the phone, he spoke to Mr. Oztemel in Moscow, he hung up the phone and he turned to me and said, "You and I are going to Moscow together this weekend."

- Q Did you hear what Mr. Stafford said on the phone?
- A Generally.
 - 0 What did he say?

A As regards this particular issue, he said he thinks that Doctor Stern would be most helpful to him if I were to come along to Moscow and would that be not agreed, and very shortly after he hung up the phone and said, "You and I are going to Moscow."

MR. HILL: Your Honor, my mouth feels like a gymnasium. May we take a recess?

THE COURT: Yes.

(Recess.)

(Resumed; jury present.)

BY MR. HILL:

O This meeting with Mr. Stafford, where the telephone conversation with Moscow occurred, Doctor Stern, was there any discussion about what you were going to do in Moscow when you got there?

THE COURT: Between Doctor Stern and Mr. Stafford?

MR. HILL: Yes.

MR. HELLERSTEIN: If your Honor please, I can't

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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0 And you went to Moscow?

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A Yes.

this remark.

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How long were you there? 0

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That particular trip, I arrived in Moscow the A

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1	6hpd Stern-cross 366
2	afternoon of September the 26th. I left Moscow the morning
3	of September the 30th.
4	THE COURT: Did you come back to the States or
5	did you go somewhere else in the USSR?
6	THE WITNESS: I came back to the States.
7	Q During this period, were other representatives
8	Satra in Moscow?
9	A Yes, there were.
0	MR. HELLERSTEIN: If your Honor please
1	THE COURT: Sustained.
2	O Did you have a conversation with Mr. Giffen in
2	Manager with annual to the good water was gotting from

of

Moscow with respect to the cooperation you were getting from the Satra organization?

MR. HELLERSTEIN: If your Honor please, there is no relevance to this.

THE COURT: Sustained.

Q Did there come a time in the course of your visit to Moscow that you had a conversation with Mr. Stafford with respect to the nature of your relationship with Satra?

MR. HELLERSTEIN: Objection, your Honor.

THE COURT: May I see counsel at the side-bar.

(Side-bar.)

THE COURT: What are you attempting to establish by this line of questioning?



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(In open court.)

MR. HILL: I have no further questions of this witness, your Honor.

MR. HELLERSTEIN: No redirect, your Honor.

(Witness excused.)

MR. HELLERSTEIN: If your Honor doesn't mind, if we broke for lunch, we would have everything organized. It would take us about less than a half an hour to complete the direct case. Perhaps we could do it shorter if we worked a little bit over lunch to organize our papers.

THE COURT: All right. We will recess for lunch at this time and we will return at 2:00 o'clock, the regular time, because there are some matters I would like to discuss with counsel in the robing room. So, be back at 2:00 o'clock.

May I see the attorneys in the robing room, please.

(Jury left.)

(Discussion off the record in the robing room.) (Recess 12:40 p.m)

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2:05 p.m.

AFTERNOON SESSION

(Trial resumed.)

(In open court; jury present.)

MR. HELLERSTEIN: Your Honor, I offer into evidence Exhibit L.

THE COURT: Will you identify it?

MR. HELLERSTEIN: It is covered by a stipulation of authenticity among the parties.

THE COURT: Is it described or identified anywhere?

MR. HELLERSTEIN: It is an agreement entitled

"Financial Agreement between Satra Consultant Corporation

and IBM World Trade Corporation," and it is dated

December 4, 1973, effective as of September 1, 1973.

MR. HILL: I have my objection?

THE COURT: Yes.

Subject to that, it is admitted into evidence.

(Plaintiff's Exhibit L for identification is received in evidence.)

MR. HELLERSTEIN: Members of the jury, this is an agreement entitled "Financial Agreement between Satra Consultant Corporation and IBM World Trade Corporation," dated December 3 and 4, 1973 by the parties' signatures on the last page, and effective under Paragraph 17 as of

1	hpmch Stern-redirect 372
2	September 1, 1973. I would like to read parts to you.
3	I will skir down to Paragraph 1 at the bottom of Page 1.
4	(Mr. Hellerstein read portions of Plaintiff's
5	Exhibit L in evidence to the jury.)
6	MARVIN STERN, the plaintiff, previously
7	sworn, was recalled and testified further as follows:
8	REDIRECT EXAMINATION
9	BY MR. HELLERSTEIN:
10	Q Dr. Stern, you are still under your original
11	oath.
12	A Yes, I understand.
13	Q Dr. Stern, were you given any notice that there
14	was to be this December 1973 agreement?
15	A No, I was not.
16	Q Were you ever consulted by anyone of IBM or
17	anyone of Satra to the effect that there would be any
18	changes with respect to the 1971 agreements?
19	A No.
20	Q Was your advice or suggestion requested in any
21	way as to any of the terms that went into this December 197
22	agreement?
23	A No.
24	MR. HELLERSTEIN: No further questions.
25	THE COURT: Any questions?

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MR.HILL: No questions.

(Witness excused.)

MR. HELLERSTEIN: If your Honor please, I would like to read from a stipulation that was marked Plaintiff's DDDD. I should first offer the stipulation into evidence.

THE COURT: Is that a stipulation of all parties?

MR. HELLERSTEIN: Yes, your Honor.

MR. HILL: No objection, your Honor.

(Plaintiff's Exhibit DDDD for identification was received in evidence.)

THE COURT: I'm not sure I explained what a stipulation is, ladies and gentlemen. A stipulation is an agreement by the attorneys on behalf of their clients that certain facts are true.

MR. HELLERSTEIN: Your Honor, I would like to read Paragraph 4 of the stipulation which sets out the payments made by IBM to Satra up through the end of March.

Members of the jury, you will not have the document before you so I will read it to you.

Paragraph 4 of this document, Exhibit DDDD, reads as follows:

Since September 22, 1971, IBM World Trade
Corporation has paid to Satra Corporation --

MR. HILL: Excuse me.

Your Honor, I would object to this. It seems to me it's going to the issue of damages which I thought would not be part of this.

THE COURT: I am going to overrule the objection because I think it fleshes out the picture to the jury as to what kind of arrangement was here and as to whose version is more believable.

MR. HELLERSTEIN: Since September 22, 1971, IBM

World Trade Corporation has paid to Satra Corporation

or Satra Consultant Corporation the following amounts on

the following dates in connection with the agreements listed
in Paragraph 1 above.

Paragraph 1 above are all the agreements between Satra and IBM in evidence, that is, the agreement of September 22nd with Satra Corporation, the agreement of September 22nd with Satra Consultant Corporation, the modification of October 5, 1971, and the agreement I just read to you before of September 4, 1973.

On October 7, 1971, an amount of \$25,000 was paid under the agreement of September 22, 1971; the nature of the payment was an advance.

On December 29, 1971, an amount of \$25,000 was paid under the agreement of September 22, 1971; the

2 nature o

nature of the payment was advance.

On March 2, 1973, April 19,1973 and November 29, 1973, three payments totaling \$72,716.76 was paid by IBM to Satra, under the agreements of September 22 and October 5, 1971; the nature of the payment was commission.

On November 12, 1973, \$10,340132 was paid by IBM to Satra, under the same agreements of September 22 and October 5, 1971; the nature of the payments was reimbursement of expenses incurred for IBM World Trade Corporation.

On December 6, 1973, an amo t of \$11,178.69 was paid by IBM to Satra; the agreement is not identified; the nature of the payment is reimbursement of expenses incurred for IBM World Trade Corporation.

On February 12, 1974, \$951.94 was paid by IBM to Satra; the agreement is unidentified; the nature of the payment is reimbursement of expenses incurred for IBM World Trade Corporation.

In December 1973, a sum of \$66,668. and another sum of \$37,400., for the period September through December, 1973, was paid by IBM to Satra, under the agreement of December 3, 1973, and the nature of these payments were, respectively, monthly fee, monthly advance.

In January 1974, a sum of \$16,667. and a sum of

\$9,350. were paid to Satra under the agreement of

December 3, 1973; the nature of the payment was, respectively,

monthly fee, monthly advance.

In February 1974, \$16,667. and a sum of \$9,350. were paid by IBM to Satra, under the agreement of December 3, 1973; the nature of the payments was, respectively, monthly fee, monthly advance.

In March 1974, a sum of \$16,667. and a sum of \$9,350., both pursuant to the December 3, 1973 agreement, were paid by IBM to Satra; the nature of the payments was, respectively, monthly fee and monthly advance.

The plaintiff rests -- I'm sorry, we have one thing more.

We have admissions that we would like to read that were taken from depositions of the defendants by several witnesses, and we would like to read those.

THE COURT: Without characterizing, do so, and one of you will take the stand.

Ladies and gentlemen, what you are about to hear are excerpts from depositions. Assuming I don't hear any objections from Mr. Hill, there will be excerpts of depositions, who will be named.

As I have explained yesterday, if I allow a deposition to be read, Mr. Fisher will ask as the attorney

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MR. HILL: Your Honor, in view of Mr. Hellerstein's comments, that he is going to read admissions, I would appreciate it if your Honor would make it clear to the jury

that we don't agree.

and Mr. Hellerstein as the witness.

THE COURT: I will be glad to do so. I think it was inappropriate for Mr. Hellerstein to characterize it.

You will hear for yourselves whether they constitute admissions or not.

MR. FISHER: On May 8, 1972, I examined Mr. Oztemel, the principal officer of the defendant. The depositions, your Honor, have been filed with the clerk yesterday and they are available.

THE COURT: Will you indicate where you are reading from?

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MR. FISHER: Yes, your Honor. On May 8, 1972 I asked Mr. Oztemel the following questions and Mr. Hellerstein will speak as if he were Mr. Oztemel, to give the answers as On page 355 of the deposition, May 8, 1972, line "O Did you expect him to contribute any "A Well, that wasn't much of a problem because as Doctor Stern often enough pointed out, we didn't have anybody in the company with his level in that field and once we had somebody like that in our company, it naturally opened the door to people with this kind of orientation." On the same day, line 14, page 340, the following "O Did you ever believe that Doctor Stern con-"A To me it was not a relevant thing whether he convinced them. In our business and in our ethics and the way we operate, the important thing is who hrings you a

whether they met just in front of the door, it wouldn't make

a bit of difference."

At page 339, line 11, the following question was asked:

"O Well, what do you mean by whether Doctor Stern knows enough of IBM to make them change their mind?

"A If IBM stood solemnly on the resolution that they are not going to deal in the Soviet Union I don't believe Doctor Stern had enough influence there to change their mind."

Page 338, line 21. Your Honor, I will point out this is a comment by Mr. Rappel, who was representing Mr. Oztemel and the witness responded to Mr. Rappel's clarification to my question and his question was phrased as follows and the witness' answer will be given:

"We are asking you for your present belief as to what Doctor Stern said, not what you believed at the time, Mr. Oztemel.

"The Witness: Let me put it this way. To me, it does not make any difference what went behind the scenes. As far as I was concerned, it was Doctor Stern who brought up the idea of IBM. It was he who introduced me to IBM and it was he who eventually helped us to conclude the deal."

The deposition of May 4, 1972, page 151, line 23:

"O What role did Doctor Stern play in getting
Satra and IBM together?

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"A As far as I am concerned, Doctor Stern brought up the subject of IBM to me. He later came back with the report that IBM would consider going into the Soviet Union market. He did arrange meetings between us and IBM. He participated in such meetings."

At page 121, line 10, deposition of that day, the question was:

"O Prior to the meeting in late 1971, when you told Doctor Stern you would not make any further payments under that agreement, did you prior to that time, tell anyone at Satra that you were unhappy with the performance of Doctor Stern on behalf of Satra?

"A There was no performance required at the time, so I couldn't have made such a statement."

At page 156, line 14, the following question was asked:

"Q You did enter into a contract with Doctor Stern which is the subject matter of this lawsuit, did you not?

"A I entered into an agreement."

At page 157 of the deposition of May 4, line 4, the following question was asked --

MR. HILL: It has been pointed out to me by my associates, your Honor, the last answer, he didn't read all

1	4hpd "Oztemel 381
2	the answer.
3	MR. FISHER: That's not true, your Honor. The
4	answer is in its entirety as given.
5	THE COURT: It's true the discussion continues.
6	MR. HILL: All right, I will do a little reading
7	of my cwn, your Honor. I will withdraw that.
8	MR. FISHER: At page 157, line 4 of the deposition
9	on May 4, the following question was asked:
10	"Q Is that spelled out in your agreement with
11	Doctor Stern that it was subject to a more formal written
12	contract?
13	"A No.
14	"Q Did you tell him that this agreement was
15	not binding without a formal contract?
16	"A No, but there was a discussion at some
17	time that a formal contract would be drafted."
18	O: May 5, 1972, Mr. Oztemel gave a deposition,
19	page 240, line 22, the following question:
20	"O Did you agree to pay Doctor Stern 50 percent
21	of your income from IBM?
22	"A Yes."
23	Now, your Honor, we will be reading from the
24	deposition of Mr. Hanno Mott, who was an officer and the

attorney for Satra Corporation, during the relevant periods of

	440 A
1	5hpd "Mott 382
2	time.
3	At the deposition of Mr. Mott, page 132, the
4	following question was asked:
5	"Q After this" referring to what was then
6	marked Exhibit 20, which is now Exhibit C, the proposal made
7	to Doctor Stern which was thereafter accepted, the following
8	question was asked:
9	"Q After this was given to Doctor Stern and he
10	came back from California or went to California, what
11	happened next?
12	"A I gave it to Mr. Oztemel.
13	"Q And did he approve it?
14	"A It didn't need approval. According to the
15	way we look at it, it was an irrevocable offer for some
16	72 hours. Within that period of time, Doctor Stern came back
17	and accepted one of the two irrevocable offers made to him.
18	"Q And which one was that, alternative one?
19	"A Whichever the one is with no financing."
20	"O Did you see this memorandum to Mr. Oztemel
21	accepting .ternative one?
22	"A Yes.
23	At page 43 of Mr. Mott's deposition, line 23,
24	the following question was asked:
25	"Q Well, was there a conclusion reached?

of you make any provision for any services required to be

furnished by Doctor Stern?

1	7hpd "Mott 384
2	"A It is implicit in the words proposed joint
3	venture."
4	Page 131, line 25:
5	"Q Did he ever discuss that?
6	"A No. It was implicit. But obviously he was
7	going to perform functions. What they were, nobcdy thought
8	necessary at that point to delineate or outline.
9	"Q Do you know of any functions which Doctor
10	Stern was called upon to perform which he did not perform?
11	"A Not that I know of."
12	At page 44 of Mr. Mott's deposition, line 2, the
13	following question was asked:
14	"Q Did you have any part or role in the pre-
15	paration of that agreement?
16	"A Yes.
17	"O What was your role?
18	"A I advised and helped in the drafting of wha
19	finally was initialled."
20	Same page, line 14:
21	"O At that time and before the agreement was
22	actually signed with Doctor Stern, was there any discussion
23	between yourself and any members of Satra as to the proba-
24	bilities of getting IBM as a client?
25	"A Yes.

fol.

MR. FISHER: At page 14, line 6, the following

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What was the function of the executive

To advise Mr. Oztemel. " A

Were decisions made by vote?

"A No. It was sort of by unanimous consent."

Line 17:

question was asked of Mr. Mott:

On every issue there was always unanimous

"A A lot of things didn't need consent. Our opinion was asked. Sometimes things were brought up to a vote and sometimes things were not brought up to a vote. And if Mr. Oztemel had strong overriding reasons as to any matter that had been thoroughly discussed, he let us know that and we generally saw the light."

We are finished.

THE COURT: Do you wish to read?

MR. HILL: No, your Honor.

MR. HELLERSTEIN: " plaintiff rests, your

THE COURT: Ladies and gentlemen, I'm going to ask you to return to the jury room for a few minutes while I

take up some legal questions with the lawyers, and I'll call

2 you back shortly.

THE COURT: Mr. Hill, I assume you would like to make a motion.

MR. HILL: Mr. Simon would like to make the motion, your Honor.

(The jury left the courtroom.)

THE COURT: Mr. Simon.

MR. SIMON: Now comes the defendant Satra

Corporation and Satra Consultant Corporation, after the

close of the evidence and the case in chief as presented by

the plaintiff, and makes their motion for a directed verdict

in favor of the defendants that the plaintiff take nothing

herein for the reason that the evidence as presented by the

plaintiff is insufficient, or alternatively, for the reason

that there is no evidence to support the contention of the

plaintiff that an agreement constituting a meeting of the

minds, a legally sustainable agreement as to material

factors of the contract, was entered into between the parties

on or about August 31, 1971 or by the written acceptance

thereof dated September 1, 1971, for the following reasons:

Number one, it is apparent, under the plaintiff's testimony, which he does not in any way contradict, that prior to August 31, 1971 there had been many discussions but there had been no contractual agreement in the legal sense

between the parties.

It is equally apparent that the parties were at bar, or at loggerheads, directly on the issues of what to do about the expenses of operations insofar as they might be involved in servicing the IBM account in the Soviet Union, and that the parties had in their many drafts leading up to August 31, 1971, considered whether to reimburse Satra Corporation on the basis of actual expenses, on the basis of estimated actual expenses or on the basis of a formula which would serve in the stead of either actual expenses or estimated actual expenses.

Number two, it is completely clear that the instrument upon which the plaintiff declares, introduced in evidence as Exhibit C, contains the following statement:

"All expenses for the project will be advanced by Satra, to be recouped out of earnings," and then continues to discuss some incidental expenses which are not material to the thrust of this argument.

It is the position of the defendants that that language means what it says, that the words "all expenses for the project will be advanced by Satra, to be recouped out of earnings" are words of common useage and that they very clearly mean and imply that all moneys advanced by Satra for the project must necessarily be repaid to Satra at somepoint

2 | in time.

It is the very clear testimony of the plaintiff,
Mr. Stern, that that is not his interpretation of the agreement. And yet there is no evidence that Satra Corporation
either ever was presented with Doctor Stern's interpretation
of the agreement or ever agreed to it.

Stern's interpretation of this agreement was ever presented to Satra is found in Doctor Stern's declaration of the meaning of the word "incremental," which he testified was a word of mathematical useage and which meant to him that the expenses would not be cumulative, but would be annual because of the meaning of that term.

It is the defendants' position that that is not a term of common useage and that is not what that term means.

THE COURT: May I ask you a question?

MR. SIMON: Yes.

THE COURT: I am not sure that I agree with your interpretation of the facts. But assuming that I did, is it your belief that as a matter of law, if the parties did not have a meeting of minds with regard to the expense question, the entire contract fails?

MR. SIMON: Your Honor, I think it is totally -THE COURT: Isn't it possible that they could

COUTHERN DISTRICT COURT REPORTERS IL'S COURTHOUSE

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 have failed to have a meeting of the minds with regard to expenses and still had a contract on the overall basis subject to the determination of how expenses were to be shared?

MR. SIMON: Your Honor, I think the plaintiff would be at the burden and at the risk to ask the Court then to make a finding as to a reasonable interpretation and to remake the contract by the plaintiff's pleadings, which as I understand it the plaintiff has totally omitted to do, nor has the plaintiff put on any evidence in support of such a contention.

It is our position the plaintiff stands or falls on the declarations in the written agreement. He has not asked for any relief on the ambiguity, and the ambiguity as presented is a patent ambiguity and not a latent ambiguity.

burden the Court with any more argument, it is perfectly clear the plaintiff had sued on a written contract which does not mean to me or to any ordinary reader what the plaintiff says it means. It doesn't mean that to Satra, and they never agreed to it, and there is no evidence of any sort in support of that.

THE COURT: Well, I believe the jury certainly could find in favor of the plaintiff, could, I say, and it has

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established a prima facie case, and the motion is denied.

All right, gentlemen, we will take five minutes.

(Recess.)

(Jury present.)

MR. HILL: May I proceed, your Honor?

THE COURT: Let me explain to the jury.

Ladies and gentlemen, you heard Mr. Hellerstein say the plaintiff rested. That means the plaintiff has presented to you its complete case in chief, so to speak.

Now it is up to the defense to present to you their case, and the plaintiff will now have the opportunity, if he wishes, to put in rebuttal.

Mr. Hill?

MR. SIMON: If the Court please, we are simply not able to hear anything back here.

THE COURT: Why don't we close the window, then?

MR. SIMON: Thank you, your Honor.

(Pause.)

MR. HILL: If the Court please, we call, on behalf of the defendants, Hanno Mott.

(Continued on next page.)

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XX	2		D. MOTT, called as a witness by	1
	3	defend	ants, being first duly sworn, testified	as
	4	follow	s:	
	5	DIRECT EXAMI	NATION	
	6	BY MR. HILL:		
	7	ņ	Mr. Mott, what is your profession?	
	8	A	I am an attorney.	
	9	Ö	Are you a member of the Bar of the ! Late	of New
	10	York?		
	11	A	Ohio, New York.	
	12	0	Do you practice law today with a law fi	rm in this
	13	city?		
	14	A	Yes, I do.	
	15	Ω	What is the name of that law firm?	
	16	A	Koenig, Ratner & Mott.	
	17		THE COURT: You are the Mott of that fi	irm, I
	18	take it?		
	19		THE WITNESS: Yes.	
	20	Q	And in 1971 did you act as a lawyer for	r Satra
	21	Corportati	on?	
	22	A	Yes, I did.	
3	23	0	In 1971 did you have occasion to see P	laintiff's
	24	Exhibit B,	which is the memorandum of agreement d	lated

August 25, 1971 (handing)?

A Yes, I did.

O Did you, if you recall, in connection with that document see earlier drafts of that agreement?

A I don't believe I saw an earlier draft.

O Let me ask you to take a look at Plaintiff's Exhibit R and ask you if you saw this document (handing).

A Well, I must have at one time, because it is my handwriting in the upper right hand corner, "For filing."

It is a variation of Plaintiff's Exhibit B. Yes.

Q Can you describe for us the circumstances under which you saw Plaintiff's Exhibit B?

THE COURT: For the first time, you mean?

MR. HILL: Yes, your Honor.

A Well, there were, I believe, three different versions, with interlineations of this agreement. I can't tell which one I saw first, but they all came approximately within a day of each other.

There were negotiations going on between Satra

Corporation and Doctor Stern for some sort of joint working

arrangement, and this was presented to me as a draft that had

been prepared --

O When you say "this," could you give us the exhibit number so we can keep it straight?

A I'm sorry. Exhibit B or R, one of this series,

394 Moti-direct 1 9jgd had been presented to me as a draft which had been provided 2 originally, I believe, by Doctor Stern and then redrafted 3 with the advice or help of some of the different members of 4 the Satra organization. 5 Do you happen to know who? 6 A I believe the two people involved were 7 Mr. Max Schloss, who was then treasurer, and Mr. James 8 Giffen, who was vice president of the company. 9 THE COURT: Was that reported to you or did you 10 act ally participate in the redrafting? 11 THE WITNESS: It was reported to me. I did not 12 participate. 13 Q Did there come a time when you got a final, what 14 you considered to be a final version of the agreement? 15 A Well, I was given a version, which is not one of 16 these, which I was asked to redraft based on some modifications, 17 based on this with some other modifications. 18 O Did you do that? 19

A Yes.

Q And is that document before you?

A No.

Q Did you have a conversation with Doctor Stern about the redrafted version of the August 25 memorandum?

THE COURT: I'm not quite sure, when you talk

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a day in which Doctor Stern went to California from New York

and it was a day in which I was in Satra's offices and

The 25th, I believe, if I recall correctly, was

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Mr. Oztemel was going on a business trip, and I had my car there, and I drove Doctor Stern and Mr. Oztemel together to the LaGuardia Airport, where we dropped Mr. Oztemel off and then they went on to Kennedy and took Doctor Stern to catch his plane.

(Continued on page 396.)

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Q Did you have a conversation with Dr. Stern after you left Mr. Oztemel at La Guardia?

A Yes, sir.

Q Would you recite that conversation for us, telling us what you said and what Dr. Stern said, as best you now recall?

A The conversation related -- I can't recall the exact words. It dealt with the making of an agreement between Satra and Dr. Stern. Dr. Stern was quite upset because he was of the opinion that he had come to some sort of an understanding on several occasions with Mr. Oztemel and Mr. Oztemel had backed down, "reneged," to use his words, from this agreement.

And he was quite upset about this and he tried to make it clear to me that he was going to California and when he came back, I'd better communicate to Mr. Oztemel that we had better get something in writing, some sort of a written agreement between Satra and Dr. Stern, or anything that was in the offing between Satra and IBM would be called off. He wasn't going to make any more appointments for Satra, he wasn't going to work any more toward an agreement, and if he didn't work any more, then Satra was completely out of the picture with IBM, that IBM would never sign an agreement with Satra unless he took an active

part in it and brought them together.

Q Do you recall anything else that was said during the course of that car ride?

A No. It -- well, just an elaboration. It took about twenty, twenty-five minutes, to get from La Guardia to Kennedy. That he was quite upset, and he just emphasized that I'd better communicate to Mr. Oztamal that we'd better get an agreement pretty quickly or he was going to take IBM away and Satra would never see them or have anything to do with them.

Q Let me show you Plaintiff's Exhibit T, which has a draft line on it that is marked 8/26/71, and ask you if that is the document that you redrafted (handing).

A Yes, this is the document I drafted.

THE COURT: What is the number, the exhibit number?

THE WITNESS: T.

THE COURT: Plaintiff's T?

THE WITNESS: Plaintiff's T, yes. This is the draft that I prepared, yes.

THE COURT: Is it dated?

THE WITNESS: Yes. It is dated August 26, 1971.

Q This was drafted after Dr. Stern left for California?

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1	2 jgmch Lut-direct
2	A Yes.
3	Q Now let's go back sort of to the beginning,
4	Mr. Mott.
5	In the spring of 1971, what was your association,
6	if any, with Satra?
7	A They were a client on retainer with me. They
8	were one of several clients that I had. I spent approx-
9	imately half my time on Satra matters.
10	Q On the same floor that Satra was on, in their
11	office building?
12	A Yes, sir.
13	Q Were you an officer of any of the Satra
14	corporations?
15	A I believe I was secretary of all the subsidiaries
16	of Satra.
17	Q Roughly, how many subsidiaries were there?
18	A Somewhere between ten and twenty.
19	Q There came a time, I take it, when, prior to this
20	automobile ride, you met Dr. Stern for the first time.
21	No you recall when that was?
22	A Sometime in the spring of 1971, in connection
23	with the Kama River project.
24	Q What knowledge did you acquire, if any, in early
25	1971 with respect to what Dr. Stern was to do in connection

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with the Kama River project?

A Well, he was to be a consultant to satra and

I think he was to have two primary jobs in which he was
to assist the company. One was in getting export
licenses for different contracts that the Soviets might
enter into for the purchase of equipmer and goods for
Kama. And, second, he was to try to exert influence, in
a good sense, upon the Government, the White House, in
getting them to adopt a friendly policy so that the
Commerce Department would grant these licenses.

The Commerce Department was favorable toward granting of the licenses, but the State Department and the Defense Department were against them, and he was reported to have influence with the White House and he was to try to get the White House to change State's and Defense's minds.

- Q Were you party during this period to any conversations relating to Dr. Stern's compensation arrangements?
 - A Not directly with Dr. Stern.
- Were you party to conversations with people within the Satra organization?
 - A Yes.
 - O Who?
 - A Mr. Giffen and Mr. Oztemel.

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Mott-direct

Q Would you tell us what those conversations were with Mr. Giffen?

MR. FISHER: Your Honor, I object. I think we can get these conversations directly from Mr. Oztemel.

THE COURT: Sustained.

Q Were you ever asked for your advice as a lawyer with respect to the compensation arrangements with Dr. Stern?

A No.

On Kama?

O On Kama.

A No.

THE COURT: I'm sorry. I didn't hear what you said.

THE WITNESS: On Kama. On the Kama project, compensation on the Kama project.

THE COURT: Oh.

Q Were you ever party to any conversations during the period after you met Dr. Stern prior to August, at which the subject of Dr. Stern becoming an employee of Satra was discussed?

THE COURT: And in which Dr. Stern was present?

MR. HILL: I'm sorry, your Honor? I just can't
hear.

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1	6 jgmch Mott-direct 401	
2	THE COURT: Are you asking about conversations	
3	at which Dr. Stern was present?	
4	MR. HILL: No, your Honor.	
5	A Yes.	
	Q With whom did those conversations take place?	
7	A The conversations took place with Mr. Oztemel	
8	and Mr. Giffen.	
9	Q Did they ever take place with Dr. Stern?	
10	A Not while I was present, no.	
11	Q Can you tell me roughly, if you recall, how	
12	many times those discussions took place?	
13	A Oh, maybe half a dozen times.	
14	Q Did there come a time when, to your knowledge,	
15	Dr. Stern ever became an employee of Satra?	
16	A Never. Not to my knowledge.	
17	Q Did there come a time when you became aware the	at.
18	Dr. Stern was working towards an agreement with IBM?	
19	A Sometime in the middle of August or the early	
20	part of August of 1971.	
21	Q What was the knowledge that you acquired?	
22	MR. FISHER: I will object to this, your Honor	,
23	unless he states from whom, and where. Otherwise I find	
24	the question impossible to answer.	

THE COURT: Well, let's wait for the answer and

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then I will ask Mr. Hill to find out from whom the information was received and when and where.

A In conversations with Mr. Oztemel and Mr. Giffen, I was told that Satra was working with Mr. Stern in trying to get a consultant agreement with IBM and that although Mr. Oztemel didn't feel anything would come of it, Mr. Stern, who also told me this himself, and as well as having had it repeated to me by Mr. Oztemel -- that Mr. Stern had the contacts and had the connections with IBM and also the technical training, so that he would be able to get IBM to sign up with Satra.

- Dr. Stern told you this?
- Yes.
- Did he tell you this more than once?
- Yes.
- Did he make this statement to you in the presence ofanyone else connected with Satra?

Well, sometimes I heard the conversation in the presence of Mr. Oztemel and Mr. Giffen.

- Anyone else?
- There were meetings at which Mr. Oztemel, Mr. Giffen -- at one time or another, Mr. Oztemel, Mr. Giffen, Mr. Schloss and Mr. Hermann were present, and it could have been with all of some of these people. I can't

pinpoint any particular meeting.

- Q Were there more than one of these meetings?
- A Yes.
- Q Do you recall anything other than you have told us with respect to these statements that Dr. Stern made?
 - A Well --
 - Q During the period of the middle of August.
- A I'm sorry. I'm not sure I understand the qubstion.
- Q Have you now told us everything you now recall Dr. Stern said during the middle of August with respect to getting IBM as a client?

TBM as a client is because of his technical knowhow about systems management and computer software and technical knowhow and knowledge of the IBM mind, which was admittedly different from the Satra mind, IBM being a large, very big American company with lots of organization and technical ways of doing something and Satra being a relatively small trading company which sometimes operated in a less formal, unorthodox manner, and he said that you had to understand how IBM worked in order to be able to work with them, that he could supply to Satra that ability to work together with IBM which no one in the Satra organization possessed.

- Q Anything else that you now recall?
- A No, not specifically.
- Q During this period in August up through, let's say, August 31st, the 1st of September, did you have any contact with anybody from IBM?
 - A Not at all.
- Q Did there come a time when the question of Dr. Stern's arrangement with respect to the compensation and sharing and working with Satra was discussed with you?
 - A Yos, quite often.
- By whom?
- A Mr. Oztemel, Mr. Giffen, Dr. Stern himself, Mr. Hermann.
- Ω Do you recall when the first of those conversations was held?

A I think sometime between the 10th of August and the 25th. I can't be more specific.

As I stated, my office was on the same floor as Satra. I was in their offices every day on a variety of matters. I saw Mr. Oztemel quite often, and when the occasion arose and I was in his office and someone was talking about IBM or Dr. Stern, we talked about it.

Dr. Stern was in and out of our offices all the time. It just came as it came up. We didn't plan meetings

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on it. It just occurred.

Q I show you a copy of Plaintiff's Exhibit A, which is a document which bears date August 13th, and is entitled "Memorandum of Agreement" and ask you if during the month of August of 1971 you saw that document.

THE COURT: Exhibit A?

MR. HILL: Yes, your Honor.

A I don't recall ever having seen this document before the present litigation started. I think I saw it the first time at my deposition.

Q Would you tell us, as best you now recall, what on the subject of his arrangement with Satra Dr. Stern said to you during this period in middle August?

A I think until the initialing of the document which has been introduced as Exhibit C, there was --

Q That is the document dated August 31st?

A August 31st, yes. There was no one thing, no one arrangement that Dr. Stern put forward.

We discussed alternatives and he wandered,
varied. One day he wanted to have an agreement which just
made him a partner in a joint venture, which he took a

flat percentage of, and the next time the possibility of
guaranteeing some sort of money to him, and then he would

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take a different percentage or he would take a salary.

It was constantly changing all the time.

Q Did there come a time when the discussions with Dr. Stern reached a point where you were advised that an agreement was going to be executed?

A There came a time is which Dr. Stern was insisting that something be put in writing, and that he have an opportunity to respond, and the document of August 31st was prepared, and I assisted in the preparing of it. I knew that we were going to go ahead on that basis, if it was acceptable to him, as one of the two alternatives presented, and the next thing I knew, the document which I assisted in preparing was initialed by Mr. Oztemel and giver to Mr. Stern.

This came about when Mr. Stern came to my office with this document and showed me Mr. Oztemel had now signed it or initialed it.

- Q Were you present when it was signed?
- A No.
- Q You said that you assisted in the preparation of the document.

Did you dictate that document?

A I don't believe so. I believe I made changes in it, but I am not completely sure.

myself it is typed by my secretary and it's typed on plain bond. Plaintiff's Exhibit C, the August 31st, is prepared on Satra stationery, which indicates my --

I know it wasn't typed by my secretary.

It may have been a joint effort based on somebody else's draft, but I did review it and make some changes because there are some interlineations in my handwriting.

THE COURT: Do you know who assisted?

THEWITNESS: It had to be partially Dr. Stern -the same cast of characters, your Honor.

Q When you say --

THE COURT: You don't know whose secretary typed it?

THE WITNESS: Yes, Mrs. Van Stavern, I believe. She was secretary to Mr. Ozte el and also assisting him.

on the 31st between Dr. Stern and Mr. Oztemel on the subject of the agreement contained in Exhibit C?

A I don't recall.

O Do you recall that in your presence on that day Dr. Stern told Mr. Oztemel that he, Mr. Oztemel, had reneged?

MR. FISHER: I object, your Honor. He is leading

THE COURT: Overruled.

A Mr. Oztemel said he couldn't have reneged because there wasn't an agreement. In each instance he said this might work, I'll have to take it up with my executive committee and I'll get back to you.

- Q These conversations occurred prior to August 31st?
- A Yes.
- Q Did Dr. Stern in your presence any time ever say to Mr. Oztemel in words -- well, use the word in referring to Mr. Oztemel as a "cheat"?

MR. FISHER: Objection, your Honor. He can ask him what was said and who said it, but to imply --

THE COURT: I think the question is leading. I will allow you to ask the witness if he recalls any conversation in which the plaintiff made adverse comments.

If he answers affirmatively, you can ask him what comments were made.

- Q Would you answer that question?
- A Yes. The only terminology I heard Dr. Stern use was to say that Mr. Oztemel reneged.
- Q Mr. Mott, I have given you, put before you Plaintiff's Exhibit C, the August 31st letter, and I would like you to turn your attention, if you would, to the schedule at the back of that document with respect to expenses.

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Did you have a discussion with Dr. Stern on either the 30th or the 31st with respect to the content of that schedule?

A Yes.

Q Would you tell us what that discussion was?

A We were trying to work out a schedule of expenses which we had agreed that if there was an agreement for sharing of commissions, that the commissions had to be reduced by, and the question was how to figure out what these expenses would be, since it was clearly unacceptable to us and not only unacceptable, but impossible to find out or determine what actual expenses would be.

Q What was the reason for that? Was that because you had other clients in Russia?

A As was envisaged, if Satra made an agreement with IBM, there would be a lot of personnel in the Satra organization --

MR. FISHER: I object, your Honor.

THE COURT: I really don't think it's necessary to go into all this detail. I don't think it's disputed that it is impossible to determine the actual expenses.

Q Was this part of your discussion with Dr. Stern?

A Yes.

THE COURT: That doesn't mean it is relevant.

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expenses?

MR. HILL: I understand, your Honor.

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THE COURT: It isn't disputed, is it, Mr.

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Fisher, that it is impossible to determine the actual

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MR. FISHER: That it is impossible --

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THE COURT: It would have been impossible for

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Satra to determine actual expenses?

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MR. FISHER: I don't think that is true, your

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Honor. The schedule was supposed to be in lieu of having

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to have them prove to us what their actual expenses

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were. It was a fixed schedule.

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THE COURT: Then I will allow the testimony.

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A It would have been impossible because there

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would be a lot of Satra personnel working on the 1BM project and no one would be working full time. It would

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be impossible to keep such records and the company wasn't

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geared to it to show which employee spent what on what

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day, how much of his travel, general overhead was attrib-

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utable to the IBM agreement.

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There was just no reasonable way of breaking this down, and an added factor, in any event we wouldn't want outsiders going through our books and doing their own kinds of audits for this kind of purpose, seeing what salaries were, et cetera, so we had to come up with another) Inne

alternative, how to determine expenses.

We sort of did a rough computation, togehter with Mr. Hermann, the company's auditor, Mr. Giffen and Dr. Stern, in which we knew how the company operated and figured that on a total so many people cumulatively would be working on the project; maybe three people full time, although it wouldn't be the same people. It might be ten people who worked parts of days, but altogether --

MR. FISHER: Your Honor, is the witness telling us what was said at the conversation, or is he explaining it to the jury?

THE WITNESS: This is our reasoning as we got to this and this is --

THE COURT: The substance.

THE WITNESS: The substance of the conversations.

A (Continuing) So, we discussed and decided that so many men would be working on this project and we figured out the average, what the average salary would be, approximately, and expenses and everything, and came to what we figured would be an annual expense of Satra in servicing the IBM agreement.

From this we decided to prepare a schedule which would say that arbitrarily we would assign somuch expense to the IBM contract, which would be used to reduce the

revenues, the commissions from IBM, once they came in.

Then we went further and we said, however, as business grows, obviously our expenses will grow, and if we make no expense, we will have so many expenses, and if the sales multiply, Satra would have more expenses and we had to come up with an increasing schedule.

We decided it could be there might not be any commissions for years, but our expense would go on.

Therefore, we drafted this schedule, which was an attempt at putting on paper what our conclusions were, that we would have a minimum of approximately \$100,000 expenses a year, and if our income from IBM didn't exceed \$250,000 a year, those were the expenses that would go against it.

Therefore, if the income from IBM went to \$500,000, instead of having \$100,000 expenses, it wouldn't go up proportionately, it would go up pro rata, so you would have another \$150,000, which would goup this way, and it was our intention to prepare a schedule that provided for expenses to reduce the IBM commissions as they came in.

Q Was there any discussion as to whether expenses, hypothetical in the senses that they were an arbitrary number, were to accumulate against commission, or was there a cut-off each year?

MR. FISHER: Is this part of the conversation?

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MR. HILL: I have asked the question that way.

THE COURT: That is the only admissible way.

A There was no direct discussion with Doctor Stern on this point.

MR. FISHER: I move to strike the testimony, your Honor. I understood everything he was testifying to was a conversation with Doctor Stern.

THE WITNESS: In Doctor Stern's presence.

THE COURT: He testified there was conversation in Doctor Stern's presence about certain things but not about that question last asked about.

Q Do you recall anything else that was discussed with Doctor Stern in connection with Plaintiff's Exhibit C before it was executed?

- A Before it was executed?
 - o Yes, sir.
- A No, not before it was executed.
- Did there come a time after it was executed that you had further discussions with Doctor Stern about the content of Plaintiff's Exhibit C?
 - A Yes.
- Ω Will you tell μs what those discussions were, and when they occurred?
- A Very shortly after -- well, after Doctor Stern

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Mott-direct

accepted the offers contained in Plaintiff's Exhibit C, I prepared a draft of an agreement which would put in more formal terminology what was contained in Plaintiff's Exhibit C, and Doctor Stern was on his way to California and wanted to take a copy of that with him to his attorney, to people on the West Coast, and I gave him a copy of my draft, and he took it and we had discussions concerning this draft.

THE COURT: Before he went to California?

THE WITNESS: Before he went to California.

Q Let me ask you this question, Mr. Mott. At those discussions on the 31st, when Plaintiff's Exhibit C was signed, was there any discussion on the subject of preparation of a formal agreement?

THE COURT: In Doctor Stern's presence?

MR. HILL: Yes, sir.

MR. FISHER: May I have the question read back?

THE COURT: Yes.

(Question read.)

MR. FISHER: Your Honor, I would like to object on the grounds of the parol evidence rule. If your Honor desires, we can approach the bench.

THE COURT: I'm willing to hear you.

(Side-bar.)

MR. FISHER: Prior drafts contain a sentence

3hpu that

that the parties intend to enter into a more formal contract.

Exhibit C and D makes no such reference to it and I will

prior to August 31.

object to any testimony concerning that.

THE COURT: If the parties reach a full agreement which says absolutely nothing about it being changed, but then after meet and want to formalize it or change it -
MR. FISHER: I believe the question was on or

THE COURT: No, on August 31, at the time of the execution.

(In open court.)

MR. HILL: I will reframe the question.

On the 31st, when Plaintiff's Exhibit C was executed, was there any discussion about preparation of a more formal agreement with Doctor Stern?

A When Doctor Stern came to my office with the accepted copy -- no, not on the 31st I don't believe.

Ω When did such a conversation occur, if ever?

The conversations before the 31st when we talked about having an agreement, we had discussions. We were going to prepare an agreement. Plaintiff's Exhibit C was never considered -- \

THE COURT: Wait a minute. I will sustain an objection to that statement and have the jury disregard it,

recognize the writing on that.document?

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THE COURT: But it was that very day?

THE WITNESS: I'm not sure. Either that day or

the day when he came back from California. I believe it was before, but I'm not certain.

THE COURT: Either just before or after.

Q What was the conversation, as best you now know?

A Doctor Stern came to my office and was quite upset because he thought that I was trying to renegotiate the agreement he had reached with Mr. Oztemel on the 31st or the 1st, whatever date he had accepted Mr. Oztemel's proposal.

O Did he tell you why he thought so?

A He was -- he had a number of comments as indicated by his comments here on Exhibit Z, but he was mostly upset with the provision I had put in that the receipts were to be reduced by the agreed upon expenses on a cumulative annual basis and he said, what was I doing, trying to renegotiate the agreement, and I told him that I wasn't renegotiating anything, I was drafting an agreement solely based on my understanding of the August 31 offer and acceptance as understood by Mr. Oztemel and instructed by him to do; that my draft of the September 3rd, Z or X, reflected solely my understanding of the involvement in Plaintiff's Exhibit C.

O What did Doctor Stern say in response to that?
THE WITNESS: May I repeat the language, your

PERCETERS US COURTHOUSE

Honor?

THE COURT: Yes.

- A "Horseshit."
- O Then what happened?

A He suggested that I get another lawyer, an outside lawyer to act for Satra and one who could be fair and impartial and interpret or draft an agreement based on the August 31 agreement. I told him that I thought I had drafted something that was fair and impartial and intended to draft something fair and impartial and there was no necessity for getting another lawyer. He, of course, should get his own lawyer.

o Did you say that to him?

A Yes, and I had said that a number of times, because there were tax problems he had and basic substantive problems, in an agreement to which there were two parties whose interests were not necessarily the same and that it would behoove him he should be represented by counsel.

O What did he say to that on these earlier occasions?

A On one occasion, in my presence, he called an attorney in California whom he knew and put me on the phone with him to raise some tax matters that he was considering in connection with that agreement.

MR. FISHER: May we have a date and time for this conversation? It is my belief it is long after the events, after August 1971.

THE WITNESS: I thought it was before, but it could be. I honestly don't remember exactly when that was but I did on occasion before August the 31, make a comment if we're going to make an agreement with him, he should have his own laywer. I can't pinpoint what exact date it was, but it was screetime before the 31st.

THE COURT: Did you consider vourself the attorney for Satra?

THE WITNESS: No. It's happened on a number of occasions where Satra makes an agreement with another party and I am asked to be, in drafting the agreement, to act as attorney for both sides on the theory I would act impartially in terms of drafting, what the parties had come to an understanding, an agreement.

THE COURT: Did you ever discuss with Doctor Stern whether he was agreeable to your acting jointly as attorney for him and Satra?

THE WITNESS: He knew that I was.

THE COURT: How did he know that?

THE WITNESS: He knew I was drafting and when I suggested he get a lawver, he said it wasn't necessary at

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this point in time.

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THE COURT: He may simply have been prepared to have accepted your version regardless of who you were acting

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for, but regardless, those were the facts?

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THE WITNESS: Yes.

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THE COURT: Would you like to take a break? I saw you looking at the clock.

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MR. HILL: I would like to.

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THE COURT: All right.

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(Recess.)

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Mott-direct

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Mr. Mott, can we go back to Plaintiff's Exhibit X? I think you've already told us you had a conversation with Doctor Stern with respect to that portion of the agreement that related to the expense situation.

Have you told us everything you recollect with respect to what was said by you to Doctor Stern and by Doctor Stern to you?

A No. We got into what Doctor Stern told me he thought that schedule meant, and I told Doctor Stern that --

What did he tell you he thought?

A Doctor Stern said that the way I drafted it I was trying to make a new deal, that that's not what that schedule meant, the schedule meant that these expenses were o a annual basis and that if there was no income in any year, well, those expenses were, in effect, lost.

And I told him that is nonsense, that's not what we intended, that never came into Satra's mind, because it wouldn't be fair, it didn't make any sense that way, it couldn't make sense that Satra would work for five years, say, and maybe have a hundred thousand dollars worth of expenses in each year and in the sixth year some revenues come in and the only thing you are going to offset against those revenues in the sixth year would be those expenses you had in the sixth year.

2	I told him it was obviously intended, at least
3	from Satra's side, the entire time that these expenses had
4	to be cumulative, otherwise the whole schedule wouldn't be
5	fair and the whole agreement wouldn't make any sense becaus
6	it would be a losing proposition for us. Unless you made
7	\$50,000,000 or some fantastic amount, your expenses on a
8	cumulative basis, which you couldn't deduct, would be
9	greater than the income we ever had.

Q What did Doctor Stern say when you said that to

A He said no, that's not what it is and you are just trying to change the agreement and I am not going to accept this.

And at that point you made the suggestion that he retain counsel?

A No. He suggested that I get outside counsel to do it. And I said no, I was perfectly capable of drafting a fair agreement based on what I understood this was, which was fair to both parties, because I wasn't trying to be an advocate or be unfair to either party or take an advocate position but just be objective about the whole thing.

? Was there any discussion at that meeting that we are talking about, about going back to Mr. Oztemel on this problem?

NIL.

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1	3jgd Mott-direct 425
2	A I'm sorry?
3	Q Was there anything said about either one of you
4	going back to Mr. Oztemel to discuss this problem?
5	A No.
6	Ω Did there come a time when you had any further
7	discussion with Doctor Stern about the agreement which is
8	contained in Plaintiff's Exhibit X, your draft?
9	A Yes. I don'tbelieve I had any further discus-
10	sions with him about this agreement.
11	Ω With him. Did you have any discussions with
12	anyone about this agreeement?
13	A After my discussions with Doctor Stern I reported
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16	cussions with Mr. Stern thereafter on this subject, to your
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20	made between Doctor Stern and Satra with an attorney acting
2	on Doctor Stern's behalf?
2	2 A Yes.
2	Q And who was that discussion with?
2	A A Miss Rita Hauser called me on the telephone
	one day and said she represented Doctor Stern and she wanted

to

to come and talk with me about an agreement between Doctor Stern and Satra.

MR. FISHER: Can we fix a date for this?

MR. HILL: Sure.

- Q If you remember.
- A Yes. It was, I believe, the end of September.

THE COURT: '71?

THE WITNESS: '71.

I remember I had set up the appointment before

I went on a trip to Europe on business, and it was immediately

after I came back. I believe it was the end of September.

- O Did Mrs. Hauser bring with her a draft agreement?
- A No.
- Q Did there come a time when she did bring a draft agreement?

A No. I only met with Mrs. Hauser once. At our first meeting we discussed the subject matter of a proposed agreement and then she put one in the mail to me and I received it in the mail.

Q Let me show you Plaintiff's Exhibit XX and ask you if this is the agreement you received in the mail (handing)?

A I believe it is a cory of the agreement I received in the mail, yes, sir.

Mott-direct

	Ú	pid	you	ever	discuss	the	contents	of	that	agree.
ment	with	Doctor	Ste	ern?						

A No.

Nas that agreement ever signed by anyone on behalf of Satra?

A No.

Q Did there come a time when you had a discussion with Doctor Stern on the subject of your dealing, or speaking, I suppose I should say, directly to IBM personnel?

A Yes.

O When?

A It was the day that Doctor Stern appeared in Satra's offices with an agreement between Satra and IBM which IBM had already signed.

I think from the testimony that it was

September 22nd, but I don't remember, or the 26th. I don't remember the exact day; whatever that day was that they appeared, the day he got the agreement from IBM signed by them.

? And what did you sav and what did he sav?

A He brought the agreement to me and asked me to review it, that he had shown it to Mr. Schloss, who was the only executive officer of Satra in New York at that time who could sign the agreement, and Mr. Schloss said that he

SOURT REPORTERS ILS COURTHOUSE

Mott-direct 1 6jqd wasn't going to sign the agreement unless I reviewed it and 2 3 approved it. I took the agreement and I did review it and I 4 told Doctor Stern that I didn't like it, I didn't like the 5 fact that the agreement was with Satra Corporation, that the 6 agreement should be with Satra Consultant Corporation, and 7

O Did you tell him why you wanted to do that?

could he get it changed into the name of Satra Consultant.

Yes.

What did you tell him?

A I said that Satra Corporation was a holding company, it was not an operating company; it held the stock of all of Satra's various operating subsidiaries; one of our operating subsidiaries was Satra Consultant Corporation; that all the companies we represented in the Soviet Union had their agreements with Satra Consultant Corporation and that was the logical -- it made corporate business sense that that agreement should have been executed with Satra Consultant Corporation.

And he said no, it couldn't be changed and that was it. And --

Did he give you a reason?

He just said he wasn't going to do it.

I then advised Mr. Schloss that although I was

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unhappy because I knew that Mr. Oztemel wanted to have an agreement with IBM signed as expeditiously as possible, that he should go ahead and sign this agreement and we would try to change it afterwards.

And Mr. Schloss did sign the agreement.

- O And that's the agreement that is contained in Plaintiff's Exhibit H, I believe (handing)?
- A That's correct.
- 0 What happened then?
- A I then had further discussions with Doctor

 Stern in which I said, "Look, we've got to get this agreement changed."

And he said, "No. IBM won't do it. Stay away from them. Don't go near them. You are not to have anything to do with them. It will blow the whole deal."

I said, "Look, I don't believe that. I've dealt with too many American corporations and their lawyers. If you explain to them that there is a valid business purpose for changing an agreement, and it doesn't make any substantive change in the agreement, I can't imagine that they would have any objection. But let me talk to their lawyer. I could talk to him lawyer to lawyer and I can explain the problem to him, and if it won't work, it won't work, but let me talk to him."

1 And he said, "Absolutely not. Under no circum-2 stances are you to talk to their lawyer or anyone else." 3 And I got a little upset, and we sort of started 4 shouting at each other, and Mr. Schloss came into the room 5 to mediate. He overheard us. And I told Doctor Stern, I 6

said, "Well, you know, you can say what you want, but I'm 7

going to call."

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Did you call?

Not then.

Did there come a time when you did call? 0

There came a time when I did call.

THE COURT: You called the attorney for IBM?

THE WITNESS: Yes, sir.

Doctor Stern and Mr. Schloss then came to me and we then discussed --

THE COURT: When was this?

THE WITNESS: Very shortly after this day.

THE COURT: After the fuss?

THE WITNESS: After the fuss. I don't remember whether it was the same day or the following day.

THE COURT: Before you called the IBM lawyer?

THE WITNESS: Before I called the IBM lawyer.

And they asked me would I prepare an agreement which would amend the agreement that Doctor Stern had with

Satra, the August 31 agreement which provided that he would get a percentage, or whatever he was entitled to, from Satra Corporation, would I prepare an amendment which would entitle Doctor Stern to get those amounts he was entitled to from Satra Consultant Corporation in the event that we did make a change with IBM.

I did prepare such an agreement, which said that if Satra Consultant gets any commissions from IBM by virtue of our changing the Satra agreement to Satra Consultant, Doctor Stern would still be entitled to get his commissions, that this was not being done as a way of doing him out of his commissions.

I prepared such an agreement and then Doctor

Stern gave me the name and telephone number of IBM's lawyer and I called him and proceeded to explain the problem and found him to be in complete accord and agreement with my suggestion.

And we executed a new agreement in the name of Satra Consultant Corporation. And we also executed an amendment to the Stern-Satra agreement to provide that Stern would get the commissions from Satra Consultant Corporation.

? And the new IBM agreement was Plaintiff's Exhibit I (handing)?

A Yes.

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WELLEN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

on Going back to the conversation with Mr. Stern in which he told you not to contact the IBM people directly, did Doctor Stern give you a reason for it? Or, to put it in another way, did he give you any other reason than the reasons that you recited here as coming from Doctor Stern?

A Just that no one was going to talk to IBM except him and I wasn't under any circumstances going to talk to their lawyer or anyone else.

(Continued on page 432.)

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Q Did Dr. Stern recite to you as a resaon your conduct in connection with the drafging of the agreements of August 25th and August 31st?

MR. FISHER: I object. He is putting words in the mouth of the witness.

THE COURT: Sustained.

MR. HILL: Withdrawn and I have no further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. FISHER:

O Mr. Mott, how long have you known Mr. Oztemel?

A I think I first met Mr. Oztemel around 1963; 1964 maybe, ten years.

Q Have you been representing him as an attorney since 1962 or 1963?

A No. At that time Iwas employed as an associate lawyer in a firm that did represent him, and I've represented him myself since 1969.

Q And how long have you been an employee of the Satra Corporation?

A I am not ar employee of the Satra Corporation.

Q How long have you been an officer of that corporation?

- 11	493 A 433
1	2 jgmch Mott-cross
2	A As a nominal officer, secretary, prc ably since
3	1969 or thereafter.
4	Q And does Satra pay you an annual retainer?
5	A Yes.
6	Now, the annual retainer is paid to my firm.
7	BEfore that it was paid to me, when I was in practice by
8	myself.
9	Q No, on direct examination, you testified as to
10	various statements that you claim Dr. Stern made to you
11	prior to the agreement of August 31st, Exhibits C and D.
12	MR. HILL: D? I don't think so.
13	MR. FISHER: C, and in response to Dr. Stern, D
14	Q In respect to those statements, did Dr. Stern

- ever tell you, "I control IBM"?
 - A In substance. Maybe not those exact words.
- Q I want to know whether he ever said those exact words.

Did he ever tell you, "I control IBM"?

- I don't recall those exact words.
- Do you recall whether or not he said that?
- I said I don't recall those exact words.

In substance he said that, yes. I don't recall the exact words.

Well, were you here at the opening, when Mr. Hill

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2	opened up to the jury?
3	A Yes.
4	Ω He said he will prove that Dr. Stern said, "I
5	control IBM." And I ask you, did he ever say that to you?
6	A I am saying he may have said those exact
7	words. I don't remember those exact words.
8	Q And it is possible he may not have?
9	TWO COURT: Have you any reason to recall that
10	he did say those words? Are you just saying that you don't
11) low, you can't recall? It is fairly important.
12	THE WITNESS: I can't recall. "I control IBM,"
13	those exact words I do not remember him saying.
14	THE COURT: All right.
15	Q Did you believe in 1971 that Dr.Stern controlled
16	IBM?
17	A I would like you to define the word for me.
18	Q You don't know what the word "control" means?
19	A I know what it means. I would like you to tell
20	me what it means. It means one thing to me. I'll be
21	happy to answer that if you can explain what "control"
22	means to you.
23	Q I'll pass that
24	MR. HILL: I think the witness ought to be per-

mitted to answer.

Mott-cross

MR. FISHER: Words have a meaning in the English language.

THE COURT: Counsel has a right to withdraw his question, if he wishes.

MR. HILL: Your Honor, I do object. I think
Mr. Fisher is off on a badgering exercise and when he gets
a bad answer, he would like to not only withdraw his
question but also strike the answer.

THE COURT: I think the witness is perfectly capable of protecting himself from badgering.

- Q Prior to August 31, 1971, did Dr. Stern say to you that he helped convince IBM to enter the Soviet market?
 - A That he helped? In the past tense?
- Q That he helped convince IBM to enter the Soviet market. Did he ever say that to you.
 - A That he could convince them, not that he had.
 - Q Will you please answer my question?
 - A The exact words? No.
- Q So then, when I asked you the question on deposition under oath, at Page 145, Line 9, as follows:
- "Q Did he say he helped convince IBM to enter the Soviet market to you?
 - "A No. I think that was implicit in his being

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influential. He did not say it in so many words."

Was that true at the time you said it?

A I just said it now, too, yes. I said he did not say it in those exact words that you just put. I said no.

THE COURT: All right.

Q You said he did not say it in so many words?

THE COURT: And he says the same thing at the present time.

THE WITNESS: Yes, your Honor.

Q Prior to August 31, 1971, did you ever call up or arrange a meeting with anyone at IBM to inquire into the truth and veracity of the statements which Dr. Stern had made to you?

A NO.

Q Prior to September 22, 1971, the date that Dr. STern walked in with the IBM contract signed with Satra, did you call up anyone at IBM and ask whether Proserve Stern was telling you the truth in any of his statem.

A No.

Q Have you ever called up anyone at IBM to ask whether the statements made to you by Dr. Stern were true?

A No.

O At your deposition which you gave under oath, at

2	Page 38 you gave the	following	answers	to	the	following
3	questions, Line 19:					

"Q When next were you a party to any discussion concerning an employment relationship or a contractual relationship with Dr. Stern?

"A I can't pinpoint it. I think it was July or August 1971 when the business of IBM came to the fore.

"Q What did you learn in July or August 1971?

"A It was that Stern was introducing Satra to IBM and was working on getting a consultant agreement between IBM and Satra.

"Q Who told you that?

"A I am not sure. Either Giffen or Oztemel."

Were those answers to those questions truthful
and are they truthful?

A Yes.

DISTRICT COURT REPORTERS, U.S. COURTHOUSE

Ü	At	line	14,	you	were	asked	the	following
question:								

"O What happened next as far as you were concerned and as far as you learned of the relationship between Stern and Satra?

"A I think what probably happened next that I knew was that Stern and Oztemel and Giffen or any combination were meeting with IBM people and during the negotiation with IBM or the meetings with IBM I don't know what you would call them, but I wasn't present, somewhere along the line the question came up of how Marvin Stern was to be compensated or what Marvin Stern's role was. Then there is a gap of time and I think the next I had to do with it was when Mr. Oztemel told me one day that we better make some sort of agreement with Marvin Stern. He said he had been having discussions with him and they were discussing different possibilities.

"Q What possibilities?

"A Whether or not Stern should come on his payroll as an employee, whether Stern would become a joint venturer."

Were those answers truthful at the time they were given?

MR. HILL: Your Honor, I will object. This is

pd Mott-cross

questions of the witness on direct, then I will have an opportunity to object to the form of the question and the like and if the witness gives an answer he doesn't like, he thinks he has something that contradicts the deposition, he can use that, but I submit this is improper. It's not that I care very much but --

THE COURT: I would prefer also, Mr. Fisher,
you simply ask questions that were asked in the deposition,
and if you get inconsistent answers, you use the deposition
to clear it up. In any event, you have heard that --

THE WITNESS: It was so long ago. Whatever I gave the answer then, it was true and is still true today.

Q During that period of time, did Doctor Stern come to you and tell you he wanted Satra, whatever proposals they were going to make to him in writing, and sign their name to it?

A Yes. He wanted to have an agreement in writing.

I don't know if it was a proposal but an agreement in writing.

He wanted something in writing with Satra.

O And is that how Exhibit C came into existence?

A Yes. I wasn't present at the signing, but I was told by Mr. Oztemel, by Doctor Stern, that that was in response to Doctor Stern's request to have something in

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Mott-cross

writing to which he could respond.

At that time, and prior to August 31, was he being compensated in any way for the effort he was performing in connection with IBM?

THE COURT: If you know.

- A I don't know.
- n Did you learn on or about August 31, through September 1, 1971, that Satra had entered into an agreement with Doctor Stern?
 - A September 1, yes.
 - O Is the agreement Exhibit C and D?
- A Well, Satra had made a proposal, Doctor Stern had accepted and that's Plaintiff's Exhibit C. I didn't see Exhibit D but that was the acceptance, I assume.
 - Q You say an offer was made and --
 - A Whatever was contained in that, yes.
- O Prior to the time that you saw Exhibit C, were you asked by anyone at Satra to include in Exhibit C a provision that a formal agreement would be entered into?
 - A Was I asked to include that in Exhibit C?
 - o Right.
 - A No.
- O You have Exhibit C in front of you?
- 25 A I'm sorry?

1	4hpd Mott-cross 44:
2	O Do you have Exhibit C in front of you?
3	A No. Wait a minute. I'm sorry, I have C, but I
4	don't have Exhibit D, if Exhibit D is a part of it.
5	On Exhibit C, you will see there is a hand-
6	written notation, and the word "reversal" is stricken out
7	and "renewal" is written in. Is that your handwriting?
8	A I so testified, yes.
9	O The words "any renewal thereof" is that your
10	handwriting?
11	A That's my handwriting.
12	O Does that refresh your recollection as to
13	whether or not you saw this agreement before Mr. Oztemel
14	affixed his initial and signature?
15	A That's what I said, sure, yes.
16	O I think you testified you didn't actually see
17	Mr. Oztemel sign the document?
18	A That's correct.
19	Q At the time you reviewed the document, was the
20	provision on the third page handwritten in Mr. Oztemel's
21	hand, according to Doctor Stern, on the page at that time?
22	A First of all, I don't recall having seen the
23	schedule affixed to the two pages of the agreement. I
24	think that was affixed after I was finished putting this on.

I certainly did not see the handwriting before Doctor Stern

6hpd

Mott-cross

would say probably Mr. Hermann because he is an accountant and he writes numbers more legible than the rest of us.

O Did you ever see the schedule in a form which did not bear the caption "incremental annual revenue"?

A Sure. We worked with the numbers. The word "incremental" doesn't mean that much to me. It means there is progression, that's all.

THE COURT: The question is whether you have seen it in any other form.

THE WITNESS: Yes, without the word "increment."

THE COURT: Did you raise your hand?

JUROR NO. 5: I don't understand how those columns could mean anything in the absence of the word incremental.

THE COURT: That's a matter for the jury to consider among themselves when the time comes to deliberate. Counsel will do their best to try to bring anything out for you.

O The question is, did you ever see that schedule with a different caption?

A Yes, when we were working out the numbers and we were talking about what they meant to us, we just put down the numbers on a piece of paper. We were concerned with the mathematics of it, not the handwriting.

1	7hpd	Mott-cross 444
2	Q	My question is, was there ever another heading?
3	Λ	I said I have seen it handwritten without any
4	heading when	we had just worked out the numbers.
5		THE COURT: But you have never seen it with a
6	heading, if	there was one, other than
7		THE WITNESS: I'm sorry, no.
8	Q	Do you know the derivation or how the words
9	came to be	affixed to the schedule, "incremental annual
10	revenues"?	
11	A	I believe the terminology was put there by
12	Doctor Ster	n.
13	0	Did he discuss that with you at any given time?
14	A	The word "incremental"?
15	Ö	The inclusion of that caption and what it meant.
16	A	No.
17	0	I refer you to page 1 of Exhibit C, I, sub-
10	paragraph	B, to the first sentence which refers to deduction
19	of expense	s on an annual basis as per attached schedule.
20	Did you re	ad those words at the time you made the correction
21	on Plainti	ff's Exhibit C?
22	A	Yes.
23	Q	Did you understand them at the time you read

A Yes, I understand what they mean.

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them?

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- You stated you had a conversation with Dr. Stern some time shortly after August 31, I believe, when you discussed the word "cumulative" being in your draft, is that correct?
 - A My September 3rd drain, Z or X, whatever.
- O Do you think the word "cumulative" on your draft adds anything to the prior agreement?
- A I was writing this out in what I hoped would be a clearer way in an agreement which expanded on this. It wasn't adding and wasn't detracting.
- Ment, Exhibit C, was discussed between Mr. Oztemel and Dr. Stern, is that correct?
 - A When it was signed?
 - O When it was discussed?
 - A The concept was discussed for two weeks before.
- On The date it was signed by Mr. Oztemel; were you in the presence of Dr. Stern and Mr. Oztemel when Mr. Oztemel signed the agreement?
 - A I said no.
- O Do you know whether he and Dr Stern discussed whether or not the word "cumulative" should be in the agreement?
 - A I have no idea.

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1	hp:mg 2 Nott-cross
2	O But the draft you thereafter prepared, you added
3	the word "cumulative"; didn't you?
4	A Yes.
5	O Who told you to
6	A Who told me to?
7	O Yes.
8	
9	A I prepared the agreement on my understanding, as
9	to my discussion with Mr. Oztemel, what Exhibit C meant.
10	O Not as to your discussion with Dr. Ster s to
11	what Exhibit C meant?
12	Λ No.
13	THE COURT: No, it is not correct or
14	THE WITNESS: No, it is correct. I did not speak
15	with Dr. Stern.
16	O Whom did you consider when you prepared this
17	document Satra, Dr. Stern or both?
18	A Both.
19	O And so you didn't discuss with Dr. Stern whether
20	or not to include the word "cumulative"; you only discussed
21	it with Mor Oztemel?
22	A I didn't discuss it with Oztemel either. I didn't
23	say that.
24	THE COURT: Mr. Mott, throughout this period, whom
25	were you paid by?

hp:mg 3

Mott-cross

....

THE WITNESS: Satra.

THE COURT: Were you ever paid anything by Dr.

Stern?

THE WITNESS: No.

O Do you have before you Plaintiff's Exhibit Z, which is your draft with Dr. Stern's handwritten notations on it?

A Yes.

Q I refer you to the first page, the second Chereas clause, which reads: "Whereas Marvin Stern of blank has been active and instrumental in presenting the possibility that Satra or its subsidiaries may represent Inaternational Business Machines Corporation hereinafter called IBM and Stromberg Carlson hereinafter called Strombert in trade with the several trade agencies of the Soviet Union."

Did you believe that was true and correct at the time you prepared it, that Dr. Stern had been active and instrumental in presenting the possibility that Satra may represent IBM in the Soviet Union?

A Yes, obviously.

May I say something about the wording in this?

This is a draft, my first draft. I was working with it,

the words may not have said exactly what I intended them to

say and I would not have given it out for anyone to review

A Yes.

450 Mott-cross hp:mq 5 O Isn't it a fact that Dr. Stern and Mr. Giffen 3 attended a New York meeting on September 3, at IBM? 4 A I wouldn't have any idea. 5 O You don't know? 6 I don't know. 7 O I refer you to page 2 of the draft of what you 8 believe was your version of the Plaintiff's Exhibit C, the 9 agreement with Dr. Stern. 10 MR. HILL: I object to that. 11 THE COURT: Let's just give it an exhibit number. 12 O I refer you to page 2 of Plaintiff's Exhibit Z. 13 THE COURT: That's the August 31st--14 THE WITNESS: That is the undated one. 15 MR. FISHER: Mr. Mott's draft. 16 THE WITNESS: With or without Dr. Stern's notes. 17 O I refer you to Exhibit Z: "Stern shall be entitled 18 to the following compensation from Satra (a) an amount equal 19 to 50% of any gross retainers without deduction of any 20 kind received by Satra pursuant to any agreement by and 21 between Satra and either IBM or Stromberg." 22 Was that your understanding of what the deal was 23 as set forth in Plaintiff's Exhibit C? 24 A On a first-draft-basis, yes.

THE COURT: Mr. Fisher, I think you will have to

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Mott-cross

develop anything further tomorrow.

We will start again tomorrow morning, ladies and gentlement, at ten o'clock.

(Jury left the courtroom.)

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(In the robing room.)

THE COURT: I called you in to say that I looked at the cases with regard to the mitigation of damages and I am rather persuaded it does not apply to this case because it seems to me the situation we have here is much more conformable to the authority assigned by the plaintiff than by the defendant, namely, Weissberg v. Art Work Shop -this is the only case of the plaintiff I have looked at because one we can't find and the other is a very old Supreme Court, New York case, which we didn't think was a terribly important authority, but Weissberg v. Art Work Shop, decided by Judge Proskauer, for whom I have a lot of respect, although the day I found I came on the bench, he recited a poem to me, explaining how much he wanted to get off the bench, and Judge Proskauer's theory is -- this was a three to two decision, but not three to two on the point in question, as I see it, it seems to have been unanimous on the point in question -- that the theory of mitigation of damages doesn't apply to employment contracts unless it is a contract for exclusive employment or, putting it differently, that it doesn't apply where the person involved is a professional person, since he could do other things as well and is entitled to this opportunity regardless of whether he is deprived of this opportunity or not.

hpmch 2

I will be glad to have you look this over if you want.

MR. HILL: I haven't read the case, your Honor.

THE COURT: It is only two pages long, but

it does seem to me to be a valid theory and apply to the

I take it that is your theory, although you haven't articulated it in words.

facts as I have heard them.

MR. HELLERSTEIN: Yes, your Honor. The theory of mitigation would apply only if the person who is suing is so required to give all his services to the other party, because then if he is freed from the services --

THE COURT: He has an obligation to do something else.

MR. HELLERSTEIN: But if a person has many, many opportunities for gavining income and is not required to give full time to a particular suit, he remains free to gain as many opportunities as possible.

MR. HILL: That's your statement or what the situation is here, and you are prepared to be bound by it?

THE COURT: As I understand it, the plaintiff's theory is that the plaintiff was a professional consultant.

MR. HILL: And he was free to go out and engage,

hpmch 3

I take it, in the same kind of activities?

MR. HELLERSTEIN: No, that is not --

in your question, that the plaintiff can't have it both ways. They have to take a position as to whether under the agreement the plaintiff would have been free to do other things. I'm not saying to go cut and, for example, represent Control Data or something like that, because there would have been ethical problems involved as there would with a lawyer representing people in . conflict of interest. But short of that, the plaintiff can take the position at the same time he was bound to spend all of his time with Satra and that would leave you free to argue.

MR. HILL: I take it there is a fact, an open fact question as to what Dr. Stern's obligations were under this agreement. I am certainly not bound by Mr. Hellerstein's description, I take it.

THE COURT: In deciding any question of law, it isnecessary to have assumed or decided facts. Now, on the facts as they have been developed so far in this case, I am prepared to rule mitigation of damages do not apply.

If the facts by the conclusion of the trial are such that I think they present a different proposition,

hpmch 3a

that's another matter, but this is the rule which I think applies, and I think it proper to give you my view of the situation as the facts have come in so far.

(Adjournment taken to April 4, 1974 at 10:00 a.m.)

* * *

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1	jgd 516 A 455	
2	MARVIN STERN	
3	vs. 72 Civ. 143	
4	SATRA CORP. and SATRA CONSULTANT	
5		
6	April 4, 1974 10:00 a.m.	
7		
8	(Trial resumed; jury present.)	
9	HANNO D. MOTT, resumed.	
10	THE COURT: Mr. Fisher.	
11	CROSS-EXAMINATION (Continued)	
12	BY MR. FISHER:	
13	O Mr. Mott, you have before you Plaintiff's	
14	Exhibit D in evidence, do you?	
15	A Yes.	
16	0 Mr. Mott, I believe yesterday you testified tha	t
17	it was your understanding that the agreement that had been	
18	reached with Doctor Stern provided for an automatic expense	
19	deduction on an annual basis of \$100,000 against the first	
20	\$100,000 to be realized from IBM, is that correct?	
21		
22	Now, where on Exhibit D with its attachment,	

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Well, in the first instance, it says on page 1,

which is Exhibit C, in the body of that agreement does it

say that Satra can deduct the first \$100,000 in expenses?

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paragraph C --

THE COURT: Of which?

THE WITNESS: I'm sorry. Well, D and C. C, actually, your Honor.

THE COURT: Yes. Let's make it clear to the jury so that they know what we are talking about. We are talking about the document dated August 31st on the Satra letterhead.

THE WITNESS: That's right.

On that page, first of all it says:

"(c) All expenses for the project will be advanced by Satra, to be recouped out of earnings."

Now, it also talks about, in paragraph B, "Compensation will be 50 percent of gross revenues on an annual basis, as per attached schedule."

And the schedule, which is at page 3, and that is the one that has Mr. Oztemel's handwritten notes on it, at the end says:

"Schedule. Incremental annual revenue \$250,000.

Incremental annual expenses \$100,000."

Now, for two reasons this is why I understood, and everyone else I had spoken with until the day that Doctor Stern came into my office had told me the same thing, in all of our discussions together, that -- our discussions

Mott-cross

that day with Mr. Hermann and Doctor Stern, it was pointed out by me, by Mr. Hermann-

MR. FISHER: Your Honor, I must interrupt and move to strike. I asked him where on this agreement does it state --

THE COURT: I think Mr. Mott answered you, but I think he went beyond the answer. I'll allow so much of the answer to stand as refers to paragraph c on page 1 of Exhibit C and reference to --

THE WITNESS: Paragraph B, your Honor -
THE COURT: -- the first sentence of paragraph B
THE WITNESS: Yes, and the first sentence in

paragraph C.

THE COURT: And the reference to incremental annual expense and revenue in the schedule.

THE WITNESS: Yes, your Honor.

THE COURT: That portion of the answer is responsive.

MR. HILL: I respectfully except. I think the preceding question leads to this answer. It asks him for the basis for his conclusion.

THE COURT: No. If you want to ask him for the basis of his conclusion, perhaps you can.

Also, Mr. Mott, I caution you, please do not

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refer to what other people had to sav about this to you because you know that is not admissible, at least under the circumstances under which you reported it, unless it was in Doctor Stern's presence. If it was in Doctor Stern's presence, will you make it clear?

THE WITNESS: Yes.

BY MR. FISHER:

O Is it true that you prepared Plaintiff's Exhibit Z and that Doctor Stern made his notes and comments on it sometime after August 31? I think you said on September 3 you prepared it, is that correct?

A That's correct.

? Now, in preparing Exhibit 2, which you have in front of you, I note that you put on page 2 of the body of the agreement that \$100,000 in expenses would be taken out of revenues, is that correct?

I refer vou to the third line up from the bottom, where it says "annual minimum expenses of \$100,000."

A That's correct.

Now, when you read the letter agreement of August 31, 1971, that is, Exhibit C, did you see anywhere in the body of that agreement a provision for the deduction of annual minimum expense of \$100,000, in those words?

A Those words that appear in Exhibit 2 do not

appear in the same exact words, no.

- O So it is your testimony, is it, that as you understood the agreement with Doctor Stern, Satra could deduct every year the first \$100,000 for expenses, is that correct?
 - A On a cumulative basis.
 - On a cumulative basis?
 - A Yes, that is my understanding.
- Nhat if Satra in one year received from IBM \$50,000 revenues and incurred expenses of \$10,000? How much would Doctor Stern receive?
- A There is nowhere that it says anvthing about \$10,000.
- O You mean if you would get an automatic \$100,000 deduction, Doctor Stern would receive nothing?
- A That's correct.
- O The testimony is if Satra received \$50,000 from IBM and they incurred actual expenses of \$10,000, that's irrelevant --
- No. That's just not true, because nowhere does it say that Satra would incur actual expenses of \$10,000. We knew we couldn't figure what it was and we agreed that we would spend \$100,000 a year. That's why the schedule came about.

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what you are saying?

MR. HILL: Objection.

THE COURT: Overruled. He is entitled to know what the witness is saying.

A I am saying the specific one-time retainer that came with the IBM agreement would not be subject to the offset for expenses. We are talking about commissions.

Q Where does it say in Exhibit C that the specific one-time retainer to be received from IBM would be shared 50-50?

A Oh, it doesn't -- wait a minute. In Exhibit C?

O You have before you Exhibit D, which has the attachment.

A C, not Z? C, as in Charles?

o c.

THE COURT: Mr. Fisher, you are going to have to make very clear what exhibit you are referring to?

MR. FISHFR: I am referring to Exhibit D, which the witness has before him. And attached to it is the agreement of August 31.

that the confusion in this courtroom, with its odd acoustics, between the letter C and the letter Z is very substantial and both the reporter and I and everybody else would like it

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to be very clear.

A The agreement provides: any retainers received would be divided 50-50.

O So any retainers were to be divided 50-50, is that correct?

- A That's correct.
 - Q Without deduction of any expenses?
 - A That's correct.
 - o okav.

A So, in answer to your question, if \$50,000 were received as commissions, Doctor Stern would not be entitled to anything. If it was received as a retainer, he would be entitled to half.

Q And if in fact Satra spends \$10,000 of expenses to derive that \$50,000 in commission revenues, Doctor Stern would still receive nothing; is that correct?

A I wouldn't know whether they actually spent. We decided we couldn't determine it.

Q I said if in the future IBM were to pay Satra \$50,000 in commissions, and if in fact Satra spent \$10,000 in expenses, Doctor Stern would receive nothing, is that correct?

- That's correct.
- Q What if IBM were to pay Satra the future

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might get half of those later payments.

If the agreement was for five years, and during those five years a sale was made and the payment came in 20 annual installments of \$100,000 beginning in the sixth year, then you would take off \$500,000 for the five years and then every payment beyond that would be split 50-50.

? That's not my question, Mr. Mott.

MR. HILL: I would like to advise the Court that Mr. Giffen has arrived in the courtroom.

THE COURT: Thank you.

MR. FISHER: Should I restate the question, your Honor? I think I can make it as clear as I thought it was.

THE COURT: Yes. But it seems to me that the question has necessarily produced a somewhat speculative answer. The agreement which I call Plaintiff's Exhibit C-D, meaning both of them together, does have a term, doesn't it? Or the IBM agreement has a term?

THE WITNESS: The IBM agreement has a term.

THE COURT: I think it would be more fruitful if you were to ask a question based on the maximum term as an actuality here. You can argue from it later, if you want to.

MR. FISHER: If your Honor please, I would like to call the Court's attention to the fact that Plaintiff's Exhibit C, the agreement of August 31, covers any renewals,

al0jgd Mott-cross 464a which is what Mr. Mott wrote in. THE COURT: All right. Go ahead. (Continued on page 465.)

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Mott-cross

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Q It is a simple question, Mr. Mott. If IBM in the first year of its doing business with Satra gave Satra \$100,000 of commissions and in the second year gave Satra \$100,000, and this continues on every year, how much does Dr. Stern get out of the initial -- we will start with the initial, the initial two, three, four years of \$100,000 of commissions paid to Satra?

A If -- you are not being specific.

Q I am being specific. The question is, if IBM delivers a check to Satra in the first year for \$100,000 of commissions, does Dr. Stern get anything out of that?

A. And this is during the term of the IBM agreement?

Q In the year September 1971 through September 1972, if IBM were to have delivered a check to Satra for \$100,000 of commissions, is it your testimony that Dr. Stern gets nothing?

I'm asking you, is it in the IBM agreement? Is it during the term that existed in the IBM agreement, during that year?

I can't answer that question. During the term of the IBM agreement?

THE WITNESS: Your HOnor, may I explain?

What was the term of the IBM agreement that was entered into?

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- A I believe it was five years.
- Q So let's take five years. If in the five-year term of the IBM agreement, for five years IBM pays Satra \$100,000 of commissions a year, is it your tesimony that Dr. Stern gets nothing on that half a million dollars?
 - A That's correct.
 - Q That's the way you read the agreement?
 - A That's correct.
- And if the IBM contract were renewed, that is, if there were a renewal of the IBM contract, would your answer be the same with respect to the renewal thereof, assuming it was on the same or similar terms and conditions?
- A I don't know. I would have to look at the agreement and think about it. I haven't thought about the renewal.
- Q What did you mean by the word "renewal" when you wrote it in on August 31st?

THE COURT: On Exhibit C?

MR. FISHER: On Exhibit C.

A When I wrote it in on Exhibit C, it was contemplated that there might be a renewal of the IBM agreement.

And, provided Mr. Stern continued to provide services during the renewal term, he would be entitled to earn commissions thereunder.

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Mott-cross

It wasn't discussed how the commissions were to be computed or anything else. It was to over him if there was a renewal and if he worked.

THE COURT: Well, it is true, isn't it, it seems to inevitably follow that if the IBM agreement had been renewed under precisely the same terms as existed to begin with, and if no change had been made to Exhibit C, then the same answer would follow in the renewal period as in the original period?

mind, your Honor, whether the cumulative effect of the first five years to the extent that it was unrecouped would carry over to the second five years of the renewal term.

- Q Where in Plaintiff's Exhibit C does it say that in essence the first hundred thousand dollars -- not in essence -- where does it say in Exhibit C that the first hundred thousand dollars to be received from IBM in commissions goes to Satra and then is to be split fifty-fifty with Dr. Stern?
 - A The schedule.
 - Q The schedule as you interpret it; right?
 - A That's correct. ,
- Q And as you thereafter drafted it into a draft agreement.

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1	jgmch 4 Mott-cross-redirect
2	A That's correct.
3	Q Did Dr. Stern take issue with you when you showed
4	him that draft agreement?
5	A He did.
6	Q One final question, Mr. Mott:
7	Is it your testimony, your understanding, that
8	Dr. Stern agreed to an agreement whereunder revenues up
9	to \$100,000 a year payable in commissions by IBM to Satra
10	would result in his getting nothing every year? Is that
11	what you said?
12	A That wasn't the hypothesis on which he did it.
13	It could have happened that way.
14	Q But that was the result.
15	A It could be, yes, that's correct.
16	MR. FISHER: Thank you. I have no further
17	questions, your Honor.
18	THE COURT: Mr. Hill?
19	REDIRECT EXAMINATION
20	BY MR. HILL:
21	Q Mr. Mott, would you turn to the schedule attached
22	to Plaintiff's Exhibit C?
23	You were examined on cross with respect to the
24	meaning of the word "incremental," which has come up here,
25	and I believe one of our jurors commented on that yesterday.

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I wonder if you would tell us what the word "incremental" meant to you in August of 1971 and what it means in this agreement.

A Yes. The term "incremental" means that as the

revenues increase, as there was a separate increment, an augmentation, an increase of revenue, there would be an increase of expenses on the first \$250,000. Up to the first \$250,000, up to \$100,000 would be the expenses. The next increment of revenue, the next \$250,000 or revenue, would bring with it an increment of \$50,000 expenses.

The next increment of \$250,000 revenues would bring with it an increment of \$25,000 expenses, because it was understood that there were certain basic expenses which we would incur regardless.

As a sale went up and the commissions increased, the amount of services to be rendered by Satra would not increase directly; they would increase proportionately, because the basic work had been done. So there would only have to be a partial increase in expenses in each year. But the whole concept was that there would be a basic expense involved in servicing the IBM contract and it wouldn't be fair that Satra would be put out up to -- over at least \$100,000 a year for some period of time --

THE COURT: Just a minute.

Mott-redirect-recross

MR. FISHER: I object, your Honor. He said it wouldn't be fair that, whatever. He is summing up to the jury.

THE COURT: The objection is sutained and the jury is to disregard Mr. Mott's comment that it would be unfair. That's not his province to testify about.

Q One final question, Mr. Mott:

Did the use of the word "incremental" have anything to do, in your understanding of the agreement in August of 1971, with the issue of whether or not expenses were on an annual or cumulative basis?

A No. The word "incremental" was used here for purposes of determining what expenses related to income.

MR. HILL: No further questions.

RECROSS-EXAMINATION

BY MR. FISHER:

Referring to the schedule, the incremental annual revenue and incremental annual expenses, Mr. Mott, do I understand your testimony that if Satra received commissions of \$250,000, it takes out the first \$100,000 and splits the difference with Dr. Stern?

A That's correct.

O Okay. Now, what happens if Satra receives \$260,000 of income on commissions? Does it then take the

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1	jgmch 7 Mott-re@ross	
2	\$100,000 out of the first \$250,000 and then deduct	
3	\$50,000 out of the next \$250,000?	
4	A That's correct.	
5	Q Well, how much does Dr. Stern get if Satra	
6	receives \$260,000?	
7	A I think let me think.	
8	We new r discussed it, but I believe he probably	
9	would get \$75,000.	
10	Q And how do you arrive at that?	
11	A On the first \$250,000 you take off a hundred.	
12	That leaves 150. You split that 75-75. And then you	
13	go into the next \$250,000, and of the second 250 there is	
14	only 10. There is not enough to eat up the additional	
15	expenses to become involved in the second 250.	
16	Q So Satra keeps all that?	
17	A Satra uses it to apply against the expenses.	
18	Q Satra doesn't pay it to Dr. Stern or split it with	h
19	Dr. Stern?	
20	A No. It reimburses itself.	
21	Q And Dr. Stern , does he get charged with an	
22	additional \$40,000 of expenses in subsequent years?	
23	A No. The carryover of expenses is the minimum.	
24	Q The minimum?	
25	A The minimum.	

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1	jgmch 8 Mott-recross
2	Q Where does it say that?
3	A That was my understanding.
4	Ω That was your understanding? It doesn't say that
5	A It was everyone's understanding.
6	MR. FISHER: I move to strike that. He doesn't
7	know what was in the minds of everyone else.
8	THE WITNESS: It is not in the minds. It was
9	what was told me in the presence of Dr. Stern.
10	THE COURT: I'll allow that statement. But it
11	is not binding on Dr. Stern if it wasn't said in his
12	presence.
13	MR. FISHER: I have no further questions.
14	MR. HILL: No questions, your Honor.
15	THE COURT: Thank you, Mr. Mott.
16	(Witness excused.)
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Giffen-direct

MR. HILL: May I call Mr. Giffen at this point, your Honor?

THE COURT: All right.

JAMES HENRY GIFFEN, called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

- O Mr. Giffen, where are you now employed?
- A Armco Steel Corporation.
- Q What is your job with Armco Steel?
- A I am president of a wholly-owned subsidiary of Armco Steel Corporation called Armco International.
 - Q What is the business of Armco International?
 - A It plans and coordinates the trade of Armco Steel Corporation with the planned economy countries.
 - Q You said the planned economy countries. What do you mean by that?
 - A The Socialist countries.
 - Q The Eastern block?
 - A The Eastern block.
 - Q Joes that include Russia?
 - A That includes Russia.
 - Q How long have you been with Armco?

Q When did you w le that?

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A I began writing it in approximately 1963 and I completed the final draft in approximately 1968.

When you went with Satra, what were your job responsibilities with the company?

A I began with Satra as the director of the consultant division of the Satra Corporation.

Q Did there come a time when you became the president of Satra Consultant Corporation?

A Yes. In approximately 19- -- I believe it was 1971. It might have been 1970 Satra Consultant Division became Satra Consultant Corporation.

Q As distinguished from the rest of the Satra companies or subsidiaries, what was the business of Satra Consultant?

A The business of Satra Consultant Corporation was to represent major American companies in the USSR or Eastern Europe, offering them a service very similar to what I would term a professional service on helping them market their products or their technology in those countries.

Q In the course of that, was it the practice in Satra Consultants to solicit clients?

A Yes.

Q In 1970, without going into the names of the clients, I will later ask you to do that, but would you tell

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me	roughly	how	many	clients	Satra	Consultants	had?

A In 1970?

Q In 1970, yes. That were on a fee-paying basis.

A At that time Satra Consultant Corporation might have had twenty American companies which it represented.

I just don't recall, though, the exact amount.

 Ω Did there come a time when you met Dr. Marvin Stern?

A Yes.

Q Can you tell me when that was, as best you now recall?

A As best I recall, that was approximately sometime during the six-month period between December and May of 19- -- December of 1970 and May of 1971.

Q How did you come to meet Dr. Stern?

A I had a gentleman working for me at that time by the name of Paul Proehl.

Q Who was Paul Proehl?

A Paul Proehl was a professor of law at the
University of California, and one of my former professors.

I had hired him, I believe it was in 1970, as a consultant.

He informed me in November or December, I believe, of 1970,
that on a plane ride back from New York to Los Angeles
he had sat next to a man by the name of Dr. Marvin Stern.

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He said that, during the course of the conversation that they had, one of the projects that we were remotely interested in in the Soviet Union was discussed, which was a project for the extraction of copper from a region Baikel in the Soviet Union.

. Q Go ahead. I'm sorry.

A Dr. Proehl reported to me that they discussed this copper project and that Dr. Stern stated that he knew some peole at Cerro Corporation and that he thought that it might be a good idea if Satra met some of these people from Cerro.

Q Did there come a time after that conversation in which you met with Dr. Stern?

A Yes.

Q Would you tell us what happened at that meeting?

A I don't believe I remember the exact meeting at this time, but it seems to me that Dr. Stern visited us in our offices in New York City.

Q What was the discussion, if there was one?

A It was nostly a sort of a get-acquainted session in which Dr. Stern introduced himself, explained his past activities and told us that was -- thought it might be a good idea if we met some of these people at Cerro.

Q What happened after that?

A I don't recall the exact sequence of events, but I believe the next thing that happened was that the meeting was arranged with Cerro Corporation.

Q At either one of these meetings that you described in the early days of your meeting with Dr. Stern, did Dr. Stern describe to you what his experience had been?

A Rather briefly he described his past background as being one of having some knowledge of office systems ability, or systems management.

Q What does that mean? What did it mean to you at that time?

A To be quite frank with you, I didn't quite understand what it meant.

He did say that he was involved somehow in the computer industry, and I believe in the aircraft industry, or in a combination of the aircraft and computer industry, but I never really did understand what that meant. He did say that he had worked for the Department of Defense and that in this particular area, utilizing this particular area of his expertise.

At that particular time, he said that he was either working for -- directly or as a consultant -- for a Long Island company. I never did quite understand whether he was actually the president of the company or whether or

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1	rgmch Giffen-direct 479
2	not he was a consultant for that company, or whether or
3	not he was acting in some kind of a capacity as an investmen
4	banker, or something of that sort.
5	Q Let's move on.
6	Did there come a time that you met with the
7	Cerro people?
8	A Yes. We did have a meeting with the Cerro people.
9	Q Was Dr. Stern present at that meeting?
10	A He was present at some of the meetings. I'm not

sure he was present at all of the meetings.

Q Did any contractual relationship between Satra and Cerro come out of these meetings?

No.

Q Did there come a time after that that you had discussions with Dr. Stern about doing work for Satra?

A With regard to Cerro or with regard --

Q Nc. In any regard.

A Yes.

When did that happen, sir?

A I believe that was approximately April or May of 1571.

Who was present at this -- well, at the first of these conversations that you recall?

I can't recall exactly, but to the best of my

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knowledge, it would have been Mr. Oztemel, myself,
perhaps Dr. Proehl -- I don't exactly recall -- and Mr.
Stern.

THE COURT: Where would this be, Mr. Giffen? Where did this conversation occur?

THE WITNESS: I would think -- I just don't really recall where the conversation occurred, but it most probably took place in New York.

Q As best you now recall, would you tell us what was said at that meeting, and who said what to whom?

A Well, the meeting -- the subject of the meeting was a discussion of the Kama River truck project.

Q Would you describe, just very briefly, what the Kama River truck project was?

A Yes.

In Approximately 1969, Mr. Oztemel had some discussions with some vice-ministers in the Ministry of
Foreign Trade at the Soviet Union, USSR, and during the
course of that discussion the vice-ministers told Mr.
Oztemel that his contacts were so good with the Soviet Union
that he ought to concentrate on large projects rather than
on some of the smaller projects. They named to him at
that time three projects which might be of interest to
Satra. One of those projects was the Kama River project.

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Satra really did nothing on any of the projects for approximately one year. In approximately February or March of 1970 we began -- I believe this was in 1970. I may have my dates a little off here. In any case, approximately a year later we began discussing this Kama River project with the Soviets.

Now, the basic discussion had to do with the building of a truck project on the Kama River which would manufacture approximately 150,000 trucks and 250,000 engines. The project was divided into six separate facilities. No one really knew how much the project was worth, but we felt it was probably worth somewhere around a billion to two billion dollars.

MR. FISHER: Your Honor, I object to this. I don't see the relevancy of it.

THE COURT: It's an adequate answer, anyway.

You asked for a brief description and you certainly got one.

Q What was Satra to do when it got interested in this project? What was it going to bring to the project, if anything?

A The Soviets wanted to make a contact with a major truck manufacturing firm in the United States to act either as a consultant or prime contractor for one or more of the projects within the facility. They were interested

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for two reasons: First, for the supply of the equipment, and, secondly, they needed an American company, they felt, to represent American interests to the Commerce Department for purposes of getting export licenses.

Q Was Satra's role to be to represent these
American companies and to attempt to get the export licenses?

A The Soviets contacted us and asked us if we would introduce them --

MR. FISHER: Your Honor, I object again. We are going too far afield.

THE COURT: Let me say, first of all, the jury seems to have been given plenty of information about this proposition by other witnesses already. I don't think it's necessarily in dispute. I would like to move along to the relations between Satra and Dr. Stern, which seems to be the true subject of this trial.

Q Did you have a conversation with Dr. Stern in April with respect to the Kama River project?

A Yes.

Q What wa that conversation?

A We told Dr. Stern that we were very much interested in this problem of obtaining export licenses. We told him that in February of that year the head of licensing of the Department of Commerce had stated that there would

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be no export licenses granted for machine tools which were necessary for the projects -- for the project. We told him that ultimately we would have to do all we could to try and change the policy of the Government to obtain those export licenses, and that we really didn't feel that we had adequate information on what Government policies

Dr. Stern stated to us that he had a great deal of background in Washington, that he had many friends in the White House, and that he thought that he could provide a valuable service to us in terms of keeping us informed of the policies that were developing in Washington, and to help us formulate our policy with regard to our relations with Washington.

Q Was anything said specifically with respect to Dr. Stern assisting in obtaining export licenses?

A Well, insofar as we had to -- we felt the first thing we had to do was get an accurate appraisal as to the current situation. Once we understood what the current situation was, we felt that we could then develop a program of some sort which would help us present our views to the Government to convince those that were necessary that they should grant these export licenses.

This was communicated to Dr. Stern?

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1	rgmch Giffen-difect
2	A Yes. We discussed it generally between us.
3	Q Was there a discussion at this time with respect
4	to Dr. Stern having a relationship with Satra which
5	contemplated his being paid?
6	A Yes.
7	Q What was that discussion?
8	A Dr. Stern told us that his normal consulting
9	fee was \$500 per day. We thought that was a bit high,
10	but we said that we would instead of working on
11	the basis of \$500 a day, that we would work on the basis
12	of a two-week period for I believe it was \$5,000.
13	Q What did Dr. Stern say to that?
14	A He accepted it.
15	Q Was there anything said about what would happen
16	when the two-week period was up?
17	A I don't recall if there was or not. I don't
18	
19	Q After that two-week period expired did Dr. Stern
20	continue to work for Satra on this project?
2	1 A Yes.
2	Q For how long?
	Intil approximately the first week of July.

Q Between the termination of the first two-week

period and the 1st of July, did you have any conversations

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with Dr. Stern with respect to his compensation arrangements?

A Yes.

Q What were those compensations and, as best as you can tell us, when in this time frame did they occur?

And the end of the two-week period, Mr. Oztemel and I, or Mr. Oztemel alone -- I don't really recall at this time -- but we discussed with Dr. Stern the fact that we just couldn't continue on the basis of \$2,500 per week. We stated to him that we thought it was going to take a good deal of time to obtain these export licenses, and that we just couldn't continue on that basis. We at that time, I believe, made an offer to him along the following lines: That he would work to try and obtain the export licenses, and if he was not successful we would pay him a flat \$10,000 fee. If he was successful, or if we were all totally successful, then he would be paid \$25,000.

Q Can you give me an idea, as best you now recall, as to when that arrangement with Dr. Stern was made?

A I can't really recall, but I assume that it
must have been in May of 1971 because that was approximately
the time that we had the Soviet delegation visiting here
in the United States.

O That delegation was here on the Kama River

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1	rgmch Giffen-direct 486
2	project?
3	A On the Kama River project, that's correct, sir.
4	Dr. Stern was present with these Soviet delegates
5	when they were here?
6	A Not all of the time. He was present during
7	selected meetings.
8	Q Did there come a time subsequent to July 1st
9	when the subject of this agreement that you have described
10	to us with Dr. Stern was again discussed by you with Dr.
11	Stern?
12	THE COURT: The agreement for compensation?
13	MR. HILL: Yes, I'm sorry, your Honor.
14	A Yes.
15	Q About when was that?
16	A That was approximately in June of June or
17	July of 1971.
18	Q What was that discussion?
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2	attempt to obtain them in a thirty-day period.

Thirty days from when?

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From approximately May 18th or 19th until June --

I believe the date was set at June 25th. We looked for an even day.

Q That May 18th date you referred to, that was the date on which a protocol was signed between the Soviet Union and Mack?

A That's correct.

Q So the thirty days was to run from the signing of that agreement?

A That's correct. Sometime during that period of time, and I am not certain whether it was immediately before the June 25th date or after, it became clear to us that was going to take some time to get these export licenses, and in any case, we hadn't obtained the export licenses within the twenty-five -- within the thirty-day period.

We informed Dr. Stern of this and we told him that since we didn't obtain them within the period of the agreement -- within the period of this particular agreement, we thought that it might be a good idea if he accepted the \$10,000.

He was, _ think, somewhat disappointed, but he did accept the \$10,000.

Subsequent to that, of course, the agreement was extended from June 25th to July 25th and from July 25th

Giffen-direct rgmch to September 15th. The agreement was finally terminated as of September 15th and we did not obtain the export 3 licenses within the period of the agreement. 4 The agreement you are now referring to --5 Is the agreement between the Soviets and Mack. 6 Subsequent to June 25th did Dr. Stern come back --7 "come back" is the wrong word. 8 Did Dr. Stern do any further work with respect 9 to the Kama River project? 10 A Not that I recall, at least not with regard to 11 any of our activities that I recall. 12 Did Dr. Stern ever say to you, in words or sub-13 stance, that the payment to him of the \$10,000 did not sat-14 isfy your obligations to him under his compensation 15 arrangement wti you? 16 A I think he indicated that he was disappointed 17 with it. I, as I say -- whether it was form or substance, 18 I think he made it clear that we had reneged on our 19 agreement, that that wasn't the true agreement. 20 What did he say the agreement was? 21

Well, he never did make that clear to me, what A it was.

What did he say, if you now recall? 0

The only thing that I recall was that he somehow A

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felt that he was entitled to more money.

Q Did he say how much more money?

A I just don't recall that he ever did give me a figure.

Q When did you next have a meeting with Dr. Stern, if you did have a meeting with Dr. Stern?

A Well, I might have seen Dr. Stern several times during the summer of 1971. I just don't recall.

The next formal meeting where we discussed business, I believe was at the and of August or perhaps the first week of September of 1971.

Q Did there come a time, if you recall, in the summer of 1971, when Dr. Stern mentioned to you the possibility of IBM becoming a client, if you like, of Satra?

MR. FISHER: I object. He is leading the witness. He is indicating to the witness what he is looking for with his question.

THE COURT: That is not inappropriate -- that particular question in this case.

MR. FISHER: Can I hear the question back, please?

(Question read.)

THE COURT: I will allow the question.

Please answer it.

market and that I really didn't believe that they would

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sations with Doctor Stern.

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O At which you were present?

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Pardon me?

Giffen-direct

This is the substance of all the conversations at which you were present where Doctor Stern was in attendance? Do you follow the question?

THE COURT: Rather than putting it that way, what are you talking about when you are talking about these conversations that you had with Doctor Stern? Was it more than one conversation?

THE WITNESS: There might have been more than one conversation, your Honor.

THE COURT: You are not sure?

THE WITNESS: I'm not sure.

THE COURT: The next thing, did you have any other conversations than those that you have talked about with Doctor Stern?

MP. HTLL: I'm sorry, your Honor. What I'm trying to get at is, was anyone else present at this conversation or any conversations that might have occurred in August other than yourself and Doctor Stern.

A Yes. I might have attended conversations where Mr. Oztemel was present and Doctor Stern was present and myself, or other people.

THE COURT: You might have, but I don't think that's an admissible answer, an answer I can allow the jury to accept.

Do you have any specific recollection?

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THE /ITNESS: I have no specific recollection of

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any meetings other than those that I have already described.

Subsequent to August -- I think you made a

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specific reference to September 3 -- were you present at

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any meeting with Doctor Stern when the subject of IBM was

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A Yes.

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MR. FISHER: Objection.

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THE COURT: What's the objection?

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MR. FISHER: I would like to approach the bench,

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your Honor.

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THE COURT: All right.

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(Side-bar.)

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MR. FISHFR: Your Honor, this witness has just

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testified that his conversation with Poctor Stern that he

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can recall is that Doctor Stern told him that he thought he could get IBM as a client for Satra. We are now going to the

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period after the agreement. The defense in this action is

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that the defendants were fraudulently induced into entering

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into a contract with the plaintiff. In deposition this witness testified as to various statements made by Doctor

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Stern after the agreement. I think it's irrelevant what

statements he made to this witness after he entered into the

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whether other statements made before can be construed in the

defendant has a right to put before the jury to determine

light of the latter statements. I would allow it.

MR. HILL: I agree, your Honor.

THE COURT: I'm sure you do.

(In the presence of the jury.)

THE COURT: Before you proceed to the questioning,
I would like to instruct the jury, Mr. Hill.

Ladies and gentlemen, Mr. Hill apparently is going to ask some questions of Mr. Giffen with regard to conversations which took place between Mr. Giffen and Doctor Stern after the August 31st offer was made and the September 1 acceptance was signed.

Now, you will recall that I stated at the outset of this case, and so did Mr. Hill, that it is Satra's contention that Doctor Stern made misrepresentations to Satra, and as we have said, fraudulently induced them to enter into this agreement. The only reason that I am allowing Mr. Hill to ask questions about what took place after these papers were signed is so that you can, when you come to consider the case, determine whether what took place after, supports or does not support the thesis that Doctor Stern may have made any misrepresentations before the agreement was signed, but the question is what he did before the agreement was signed.

Do you understand that?

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All right, Mr. Hill.

Giffen-direct

BY MR. HILL:

 Would you give us the September 3 conversation with Doctor Stern?

THE COURT: First tell us where it was and who was there besides you, if anybody?

A Well, on September 3, to the best of my recollection we had a meeting with IBM and I believe there were two representatives from IBM present, a Mr. Stafford and a Mr. Hendricks; that Doctor Stern was present, Mr. Oztemel and myself.

THE COURT: This was at your office? THE WITNESS: This was at Satra's offices in New York City.

0 Was this the first time -- in the context of making a present agreement with IBM that you had met with IBM representatives?

A It's the first time I personally had met with IBM, yes.

O Go ahead and tell us what happened.

A The meeting could be described, I suppose, in two parts. In number one we discussed generally what Satra Corporations activities were in sort of an introductory way and secondly what IBM's general intentions were with regard

to the Soviet market. Secondly, we discussed what Satra might be able to do for IBM, and that took the nature of three separate activities that IBM was interested in.

O What were they?

Soviet foreign trade organization officials and other officials which would be necessary for selling their program; second, that they -- that we educate some of their people on Soviet trade practices and procedures, and thirdly, that we help in any barter or switch transactions which might arise during the course of their sales program to the Soviet Union.

O Anything else?

A We discussed in general terms possible remuneration schedules that we might adopt, but I don't believe at that time that we got into specialis as to what Satra might charge IBM for these services.

- Q Was there anything said at this meeting in Doctor Stern's presence about his then existing relationship with IBM?
 - A Doctor Stern said very little in that meeting.
- Q I wonder if you could answer my question, if you could.
 - A No. Not that I can recall.

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Giffen-direct

Was anything said about what role Doctor Stern might play in the relationship between Satra and IBM?

MR. FISHER: I object, your Honor. He is entitled to ask the witness what was said, what he recalls what was said, but to lead him --

THE COURT: Sustained.

MR. HILL: I'm sorry, your Honor, could I have the objection read back? I missed the objection.

THE COURT: That it's a leading question.

- O Do you recall anything else that was said?
- A No.
- O Was anything said by Doctor Stern with respect to what he was going to do in connection with the IBM relationship?
 - A Not that I recall.
- Q Have you now told us everything that you presently recall about the September 3 meeting with IBM?
 - A Insofar as I can remember at this time.
- O Did you have any further meeting with Doctor Stern that day on the subject of IBM or where IBM was discussed?
- A I believe Doctor Stern and Mr. Oztemel and myself discussed the relationship, and perhaps Mr. Most also subsequent to that meeting.

Give us what you now recall as the substance of the conversations with respect to the IBM relationship?

The subject of the relationship -- or the

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charge a fairly large retainer fee, or annual fee, or semiannual fee to IBM such that it would cover our expenses in
working with IBM. I was quite concerned, as were some other
people at Satra, that a corporation the size of IBM could
literally run our legs off over in the Soviet market because
they were so large.

You mean because you would have so many people going in and out of the Soviet Union?

A Yes. We wanted to charge a large enough fee to cover all of our services to IBM. We didn't at that time have a clear idea of what it was we thought we could charge. I believe we discussed fees ranging from \$100,000 to \$500,000 per year. At one point I believe we discussed \$250,000 per year. We also discussed adopting a sliding scale fee, that is, if so much activity were to take place in the Soviet market you might be charged X fee. If IBM conducted more activity it would be X plus some other figure. With regard to the commissions we felt that we should charge a percentage on all -- on the gross amount of all sales that IBM made in the market.

We had a sharp disagreement as to what we thought the potential of IBM was in the Soviet market.

? You said we had a sharp disagreement. Who do you

Giffen-direct

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mean?

myself. Doctor Stern felt that the market potential of IBM in the Soviet Union was fantastic, and I was a little bit more conservative in my estimate of what the market would be. That was important and relative to our discussion of what the commission would be because if we thought that the market could be as high as some of Doctor Stern's estimates, then, of course, we might be willing to take a lower commission.

So, we did discuss commissions and I believe we discussed commission rates of anywhere from one or two percent up to seven or eight percent.

Q What happened then?

A I believe Mr. Oztemel and I had some meetings ubsequent to that -- I'm not sure it was the same day or not, it might have been -- in which we decided to put down some of our ideas in writing as to what we thought we must have as a minimum position.

Q Did the: writing ever get delivered to Doctor Stern?

A I believe it, did, yes.

0 What happened thereafter with respect to the IBM relationship?

A Well, some time subsequent to that date we did come to enter into an agreement in principle with IBM and then subsequently an actual contract.

Q During this period of September 3, was there any conversation between you and Doctor Stern with respect to the conduct of the negotiations with IBM?

A Yes. On several occasions Doctor Stern and I would discuss the IBM relationship. I felt --

Q Tell us what he said, okay?

Yes. On several of those discussions -
MR. FISHER: Can we fix a period of time?

THE COURT: Would you be as specific as you can?

I recognize the problem, we all do, of trying to think of these things three years ago, but to the extent you can sort it out of different days and so forth, would you please do that?

THE WITNESS: Yes.

A I would say some time between August 29 and 30 and September 17 we had a variety of discussions on the relationship between IBM and Satra. I stated to Doctor Stern that I felt that we should meet with IBM directly and he stated no, we don't know how to talk to IBM; that he wanted us to stay out of the conversations directly with IBM; that he would arrange the meetings and that he would

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bring them to Satra.

He stated to us during these conversations -he stated to me that the real reason IBM was interested in
doing this deal was his systems capability. I argued quite
sharply with him. I told him that in my opinion the reason
they were doing it was for Mr. Oztemel's expertise and for
Satra Corporation's services. He felt --

Q What did he say in response to that?

A He felt -- well, he stated to me on one particular occasion I recall -- I don't recall which particular occasion it was, but I do recall him stating to me in Mr. Ozteral's office that that was not true; that IBM was interested in his services and that if I wanted to find out just not to talk to him any more and we would find out that IBM would not sign with Satra.

Mr. Giffen, I am going to show you a document which has been marked Plaintiff's Exhibit A and ask you if you can tell me whether during August or early September of 1971 you ever saw that document?

MR. HILL: For the record, your Honor, that's the agreement dated August -- the document, I should say, dated August 13, which I think Doctor Stern has testified he prepared after the August 10 meeting with Mr. Oztemel.

THE COURT: Right.

Giffen-direct

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were	so	many	of	the	se	floa	ti	ng	arou	ınd	tha	t I	just	can	't
recal	11	any p	art	icul	ar	one	aq	ree	emen	t.					

Q Let me ask you the same questions with respect to Plaintiff's Exhibit B and C, and that is whether you recall seeing those documents during this August - early September 1 - lod.

A Again my answer would have to be the same. I probably read these agreements on various occasions, but the situation was very fluid, to say the least, and I never really took too much note of them.

O Did you ever, if you recall, during the month of August, either have yourself a discussion with Doctor Stern or be present at a discussion where Doctor Stern was also present, third parties, Mr. Oztemel or anybody else, where the subject of his arrangement with IBM was discussed?

A Could you repeat the last part? Was the subject of his --

THE COURT: Arrangement.

Q Arrangement with Satra where the IBM situation was discussed.

A I believe I was present on several occasions where that was either discussed directly or was discussed in my presence.

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- Q Where Doctor Stern was present.
- A Where Doctor Stern was present.

MR. HILL: I thought we did.

Q And can you give us, as best you now recollect, Mr. Giffen, the substance of those conversations?

MR. FISHER: Do we have a time fixed for this?

THE COURT: Let him do it. I think Mr. Giffen understands we are looking for as much specificity as possible. He is a lawyer.

THE WITNESS: The difficulty is, your Honor, I just can't fix a date on any of these meetings. They took place some time in the last week of August and the first week or two of September.

THE COURT: All right.

O Before you answer that question, let me ask you this: Was Doctor Stern in the Satra offices during this period?

A Yes.

And was he there all the time, or just what was-how shall I put it? -- the density of his attendance at the
office?

THE COURT: How much time did he spend?

MR. HILL: Yes.

O How often was he there? How much time was he

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there? What is your recollection?

A My recollection is that he was in and out of the Satra office almost every day for approximately three weeks or so. Now, he might have disappeared for two days at a time, or three days, but I really didn't keep track of Doctor Stern's activities. I saw him there, it seems to me, as I recollect, quite often during that period.

O Did he have a place in the office where he spent most of his time?

A He seemed, as I recall, to have been using several offices.

O Okay. Now, let's go back. And the time frame that you are referring to is this two or three week period the end of August, the early part of September; is that right?

A That's correct.

Q Would you now tell us the substance of these conversations with respect to his agreement with Satra in --

THE COURT: If you remember any separate occasions, tell them separately, please.

I do not remember any separate occasions that

I can pinpoint as to one particular conversation as to one

particular date. I do recall that the substance of the

discussions centered on Doctor Stern's relationship to

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Satra, and I believe the discussion was divided into two parts.

Giffen-direct

Discussion one was a discussion of Doctor Stern as an employee of the Satra Corporation.

Discussion two was Doctor Stern as a partner of Satra Corporation.

Q Let's take them separately, then, and, if you will, tell us as best you now recall what was said on the subject of Doctor Stern becoming an employee of Satra.

A I believe we offered that as one alternative to Doctor Stern. Doctor Stern, however, stated that his salary would be so hight that he didn't think that that would be a very feasible relationship, and he also stated that he wanted to do other projects outside of Satra and that he really wasn't too interested in becoming an employee.

And what was said on the subject of his going into a "partnership" with Satra?

A Well, with regard to his relationship as a partner, Doctor Stern felt that he wanted to operate in more than one area, that he wanted to set up his own company possibly, possibly act as an individual.

He stated to us that he would have to check with his lawyers on that particular subject.

We then began discussing what remuneration we

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might pay Doctor Stern for his services to Satra Corporation.

He stated that he felt that he should be a 50-50 partner.

We had some difficulty in understanding how we could become a 50-50 partner because we didn't exactly understand what his services were going to be, at least in that period of time.

MR. FISHER: I object. His understanding? Let him just ask him what was said.

THE COURT: Did you say that to him or did you tell him that was the reason?

THE WITNESS: I believe there were several occasions where we tried to determine precisely what it was Doctor Stern was going to do in his part of the partnership.

THE COURT: I take it you didn't literally say to him, or maybe I am wrong, "Doctor Stern, we won't go 50-50 because we don't know what you are going to do."

THE WITNESS: We didn't say that specifically,
your Honor. What we did say was -- what we discussed among
ourselves was, we wanted to develop a partnership, no matter
what the relationship was, that was based on whatever it was
he was going to give the Satra Corporation.

BY MR. HILL:

Q Well, --

A During these conversations with Doctor Stern he

I never really understood what that meant. What bothered me about that was that it seemed to me that IBM was a rather large corporation and it would have more than one man in their organization that would have a so-called systems capability, if in fact systems capability was needed, and I didn't really see where we fit into the picture.

Nevertheless, this was discussed on many occasions.

We discussed a variety of proposals for remuneration and, as I say, they were all over the lot in terms of dollar amounts.

O Is there anything else you recall about the discussion?

A I just can't recall at this time.

THE COURT: Mr. Hill, I think this will be a good time for us to take a morning recess.

(Recess.)

BY MR. HILL:

o Mr. Giffen, let me ask you to do this: you've told us that you just can't, in recollection, separate these events, these conversations of the last two weeks of August and early September. With that in mind, would you tell us, to the extent you recall, if anything, what, if anything, Doctor Stern said to you during this period with respect to

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the relationship between Satra and IBM and his relationship with IBM and Satra.

A Not on any one particular occasion but statements that he made to me were at least statements that he made when I was present?

O Yes, sir.

A Well, specifically he said, in substance, at one time or another during that period, first, that he could help convince IBM to go into the Soviet market; that he could, if not exclusively, at least he could himself get IBM to become a client of Satra; and thirdly, that if he did not, if we did not utilize his services, that IBM would not sign up with Satra.

Now, those statements were made either one at a time or all at one time during any time during this period of time.

Q Let's move along. When did you, after this meeting of the 6th, next have a meeting with the IBM people?

THE COURT: Meeting of the 6th?

MR. HILL: The 6th of September, your Honor.

I'm sorry.

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THE COURT: I thought there was a meeting on the

MR.HILL: I'm sorry. You are right. It is the

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- Was there a meeting thereafter with the IBM people which you attended?
 - Yes. Sometime around the middle of September.
 - And what happened at that meeting?

A I believe that meeting was -- the next meeting, at least that I recall at this time, was at the IBM offices. I believe Mr. Stafford, perhaps Mr. Hendricks, Mr. Witham, Mr. Stern and myself were present. There may have been others. I just don't recall everyone who was there.

You want to know the substance of that meeting?

Yes, sir.

A We had pretty much come to an agreement in principle with IBM on the relationship between IBM and Satra. Mr. Witham stated that there were some changes that had to be made, they were being typed at the present time, and that we were going to receive the document before we left.

I believe I thought at the time that we were going to receive a contract. He stated there just was not enough time to get a contract together and what they did have was a letter of intent and that the contract would be following shortly thereafter.

I stated fine, I would be happy to pick up the letter of intent, although Mr. oztemel was either already in

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1	8jgd Giffen-direct 512
2	Moscow or was on his way to Moscow, I was on my way to
3	Moscow the following day, and that we would leave Mr. Schloss
4	in charge of the final discussions, which at that point
5	really had boiled down to just a matter of going over a few
6	clauses in the contract, some boilerplate clauses, and
7	signing the agreement.
8	Q Was Doctor Stern present at this meeting?
9	A I helieve he was, yes.
10	Q What happened after that? What did you do?
11	A After that meeting?
12	Ω Yes. Did you go off to Moscow?

- Yes. I left for Moscow.
- O And did there come a time when you were joined in Moscow by Doctor Stern?
 - Yes, approximately one week later, I believe.
 - And was Doctor Stern accompanied by anyone?
- A I don't know whether he was accompanied by anyone or whether he met Mr. Stafford in Moscow, but in any case approximately a week later Mr. Stafford and Mr. Stern arrived in Moscow.
- Q What was the purpose, if you know, of Doctor Stern and Mr. Stafford coming to Moscow?
- A Well, Mr. Oztemel and I had gone to Moscow to conduct some of our normal business, or our other business,

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and at the same time to begin arranging the meetings, the initial meetings, for Mr. Stafford with the appropriate people from the Ministry of Foreign Trade.

We felt that it was important --

MR. FISHER: Your Honor, I object to what this witness felt.

THE COURT: Don't give us your feelings. Just tell us what you did.

A (Continuing) We informed the Ministry of Foreign Trade officials that Doctor Stern and Mr. Stafford were coming to Moscow -- strike that.

I believe we told them that just Mr. Stafford was coming to Moscow and that --

Q Was there a reason that there was no information passed on to these Ministry people with respect to Doctor Stern?

A I believe what we stated was IBM had made a decision to come into the Soviet market and that they were going to send a representative or representatives to Moscow. We stated to the Ministry of Foreign Trade that --

MR. FISHER: I object to this, your Honor. It is going too far afield. It is conversations with the Ministry of Foreign Trade in the Soviet Union.

THE COURT: I wil' sustain the objection. But I

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Giffen-direct

understand that you were simply arranging meetings for IBM.

Mr. Stafford was the only person on the staff of IBM; is
that correct?

THE WITNESS: That's correct. Although at that time, your Honor, we didn't know if anyone was going to come with Mr. Stafford from IBM.

THE COURT: In any event, nobody else that we've been talking about from IBM was in Moscow at that time?

THE WITNESS: No.

- O Doctor Stern did turn up?
- A Doctor Stern did turn up with Mr. Stafford.
- A part prior to the arrival of Doctor Stern in Moscow on the subject of whether or not he should be there?
 - A Yes.
 - What was that discussion?

THE COURT: Was it in Doctor Stern's presence?

THE WITNESS: No.

THE COURT: I don't see how it is admissible.

MR. HILL: Your Honor, if I may be heard --

THE COURT: You may, sure.

(Side-bar.)

MR. HILL: Your Honor, as I understand this law-

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suit, the plaintiff has sued on a contract and has charged us with breaching the contract. We have said that one, we were either fraudulently induced or we were induced by means of an innocent misrepresentation into entering into this contract.

Moreover, we have denied, if there was a contract really, that we have breached it or, put in the alternative, that Doctor Stern did not perform.

Now, I think in that connection we are entitled to show to this jury the circumstances surrounding the termination of the agreement with Doctor Stern. It doesn't have anything to do with, how shall I put it, pinning the tail on Doctor Stern when Mr. Giffen describes what happened, or, indeed, the facts of which he became aware which led to the termination of Doctor Stern. It doesn't go --

ment in relationship to the question that I thought you were going to ask. I thought you were going to ask whether there were discussions in Moscow before Doctor Stern came there about whether or not he should come. Is that what you are asking?

MR. HILL: Yes, your Honor.

THE COURT: What is the basis for admissibility of a discussion between Mr. Oztemel, for example, and

Mr. Giffen? It would seem to be a self-serving declaration.

MR. HILL: It is not a self-serving declaration, your Honor, if it goes to the issue and, if you like, fleshes out the facts surrounding the termination of Doctor Stern.

THE COURT: What would the answer be?

MR. HILL: That he was told to stay away.

Because this man is an officer of Satra. This was the basis for the action that was subsequently taken, in part.

THE COURT: Well, I'm sorry. I can't buy the theory and I continue to rule as I have.

If you wish, of course, to ask whether they had discussions and whether Doctor Stern thereafter was told to stay away, you are free to ask that.

MR. HILL: But this discussion, your Honor, that he had, he had with Oztemel, and it was subsequent to and prior to the conversation with Mr. Oztemél.

THE COURT: It is not a proper way to prove things to have two members of the defendant's team sit around talking and later telling the jury what they said to each other. I refuse to allow it.

MR. HILL: I think, respectfully, your Honor -THE COURT: You've had your say, Mr. Hill. I
understand your position and I disagree.

MR. HILL: Very well, your Honor.

Giffen-direct

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(In open court.)

BY MR. HILL:

Q During the course of the stay in Moscow, Mr. Giffen, did Dr. Stern ever say to you that you were interfering --

THE COURT: Sustained. Please don't lead the witness, Mr. Hill. He is on direct examination. If you want to ask whether they had discussions on certain subjects, I would be agreeable to that. Then ask what was said.

MR. HILL: Very well, your Honor.

Q Mr. Giffen, did you have a discussion with Pr. Stern on the subject of his activities in Moscow? When Mr. Stern was -- when Dr. Stern was in Moscow in that second week?

Yes, sir.

Did we have -- did Dr. Stern and myself have a discussion over Dr. Stern's activities in Moscow?

Yes.

Yes. A

What was that discussion?

I believe I stated to Dr. Stern that I was concerned that he was making contacts with people from the Ministry of Foreign Trade and doing things that might be

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I believe we stated, or I stated to Dr. Stern, that

Mr. Perper, who was also a Satra employee, had been

doing business with the Soviet Union for a number of years,

over twenty years, Mr. Oztemel had been doing business with

the Soviet Union for over twenty years, and they had had

some experience with the Soviet market and that we asked

him to please do what we recommended in this market.

He stated during this conversation that he would do whatever he thought was right for the IBM relationship; he was concerned, at least on the first day in Moscow, that meetings had not been set up, and he therefore felt he had to take the situation in his own hands and call up the Ministry of Foreign Trade and arrange meetings.

We told him that we really didn't appreciate that too much, that everything had been previously arranged the week before, and that everything was under control.

Mr. Perper, I think, was quite upset with him for making that contact because Mr. Perper was in charge of making the -- making all of the contacts.

We --

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THE COURT: How do you spell Mr. Perper's name?
THE WITNESS: P-e-r-p-e-r, Edward A.

(Continuing) We, I believe, had other discussions

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about the IBM business in Moscow, but that had to do with the substance of the meetings that we were having with the Ministry of Foreign Trade.

Q Is there anything else you recall?

that he was annoyed that we had advised him not to come to Moscow with Mr. Stafford during this particular week.

We stated to him that we didn't think it was necessary that he be present during these meetings with the vice-ministers. We stated to him -- when I say "we," this was Mr. Perper and myself stated to him -- that we thought it was more important that Mr. Stern, Dr. Stern, be present during the exhibition to be held in Leningrad.

He stated that he had to go to Mr. Stafford -THE COURT: Do you have an objection?

MR. FISHER: Yes, your Honor. I don't understand what this has to do with this lawsuit. Actually it was an action for breach of contract and the defense that has been asserted, and this has nothing to do with the issues before this Court.

THE COURT: I think you have answered the question.

THE WITNESS: Fine. The question, your Honor,

was the substance of my discussions with Dr. Stern and I

was just trying to reply to the question.

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1	jgmch Giffen-direct 520
2	Q Have you now told us everything you now recall?
3	A That was the sum and substance of the discussions
4	that we had that I can recall at this time.
5	Q And after this period of whatever it was, four
6	or five days in Moscow, what happened? Where did everybody
7	go?
8	A I believe I returned to New York. I don't know,
9	I can't state exactly where everyone else went at that
10	particular time.
11	Q Did anybody make a trip to Leningrad or does
12	that come later?
13	A believe that followed some weeks later. Mr.
14	Perper went to Leningrad first.
15	MR. FISHER: Your Honor, I don't see the relevance
16	of Mr. Perper going to Leningrad and Mr. Giffen going home.
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19	a line of questions that will be objected to and I would
20	as soon make my offer at the side bar.
2	THE COURT: All right.
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2	Giffen what happened in Leningrad and his conversation with
2	Stafford where he learned for the first time that (one)

Stafford didn't know anything about a joint venture between Stern and Satra, that as far as Stafford was concerned the man had no competency in computers, that they didn't need --

THE COURT: Are you going to call Mr. Stafford as a witness?

MR. HILL: Yes, your Honor. But I think that,

again, and it is not my intent to irritate your Honor -
THE COURT: You don't irritate me. I just dis
agree. I can be in disagreement without being irritated.

MR. HILL: But it is our view that we have a burden that we are entitled to meet --

THE COURT: Let's go in the robing room.

(In open court.)

THE COURT: Ladies and gentlemen, will you wait just a moment? I have to discuss matters in the robing room.

(In the robing room.)

MR. HILL: It is our position, your Honor, that
we are entitled to show what Giffen and/or the other officers
of Satra knew and, indeed, from that the reasons which led
them to terminate the relationship with Stern. And all
Stafford will testify to -- Stafford, on your Honor's
ruling, can't testify to what he told Giffen. And the

Giffen-direct

knowledge that --

THE COURT: I am not saying that he could testify as to what he told Giffen. He could testify as to the objective facts that he knew. For example, if you asked him had he ever heard of Stern, did he know whether Stern brought anything to the situation, and so forth and so on, you can ask him those things.

MR. HILL: Of course, your Honor, but I do have to bring, it seems to me, that knowledge to Satra. Satra has to have a reason --

THE COURT: I don't see that. I don't think the question here is whether Satra knew this, that or the other. The question is that you have raised, properly so, as a defense, whether Dr. Stern said things that weren't true, and they were true or they weren't true.

If the jury finds that he said things to them that were not true and that were material, you are entitled to get out whatever your reasons were.

Obviously the reason may be because of what you say. The question before the jury is not why you got out, but whether what you have said about the plaintiff is true or not true.

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MR. HILL: But, your Honor, we rescinded the contract. One of our burdens, for example, is to show that we did it within a reasonable time and what the basis of our rescision was.

THE COURT: It is not what your thinking was,
but what the facts were within the reasonable period of time.

It doesn't require reference to conversations, it seems to
me, or at least it may be -- off the record for a minute.

(Discussion off the record.)

to what the plaintiff's position is with regard to the question of timeliness of rescision on the part of the defendant and whether or not that question is in issue. I point out that if the question is in issue, I believe the defendant is entitled to put before the jury the time at which it first received information which it considered adverse to the plaintiff so that the jury can judge whether the actions taken by the defendant were timely with relation to that first knowledge. If the question of timeliness is not in issue, then I know of no reason why it would be necessary for the defendants to bring before the jury reference to adverse information relating to the plaintiff received by them from third parties, at least a recountal of the meetings with Mr. Stafford in Moscow that Mr. Hill

wishes to question about.

MR. HELLERSTEIN: If your Honor please, the question of timeliness in relationship to what Stafford told Giffen and Oztemel is not in issue. We concede that very soon after Stafford told Oztemel and Giffen what they say he told them, they acted to terminate. Out point is that whatever they learned allegedly then they knew or was staring them in the face throughout this whole period from August on, and that's the issue of timeliness that we put.

So it doesn't really make any difference what this testimony is in terms of the situation of timeliness.

MR. HILL: If it doesn't make any difference it certainly ought to go in, your Honor, because what he is saying --

THE COURT: I am not sure I agree with you. If it doesn't make any difference, it does not mean it ought to go in.

MR. HILL: Your Honor, I think there is an issue here also and it returns through this whole case. This has been argued. This has been the subject of part of the cross-examination, that it was only after August 31 that we thought we had a great deal with IBM and that's when we turned this fellow off and we did it for really no other reason than because we are bad fellows. That's really the

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whole argument here. I think it is highly prejudicial to the defense of this case if we are not permitted to show what the circumstances were that led to the termination.

THE COURT: I am willing to let you question

Mr. Stafford about what he knew -- about what he knew about

Doctor Stern or about what his views were about Doctor

Stern's deficiencies, so to speak, and to ask him if he

told it to your people.

MR. HILL: But it isn't coming in thirdhand.

What's the difference, your Honor, if Stafford said, I said it to Giffen or Giffen stated Stafford said it, why isn't Giffen just -- why isn't it just as good, and I am going to have Stafford say it. Why isn't it just as good for Stafford to say Giffen told him? If there is an objection to hearsay because Stern isn't present, he is no more present when Giffen gets it from Stafford.

MR. FISHER: As I understand the defense in this action, it relates to Doctor Stern stating to the defendants prior to the time they entered into an agreement with them several things, one of which is, for example, I can convince IBM to enter the Soviet market. So they sign an agreement with Dr. Stern on August 31, they get the IBM contract on September 22, and then some time in October in Moscow, Mr. Giffen asks for a private meeting with Mr. Stafford and

PRINCE COURT REPORTERS U.S. COURTHOUSE

he says to Mr. Stafford, "Did Doctor Stern convince IBM to enter the Soviet market?" What is Mr. Stafford going to say? Of course not. You can put Mr. Stafford on the stand and ask him, did Doctor Stern convince you to go into the Soviet market and he is going to say the same thing he said to Mr. Giffen. "Did you ever communicate that to the defendant?" And he will say yes.

MR. HILL: That's what you say. Mr. Fisher would like to try my case. I am very appreciative, but I don't agree that he ought to be permitted to try it.

THE COURT: I don't either.

MR. HILL: I don't understand any logic or legally consistent reasoning which permits Stafford to recite
this and not permit Giffen to recite that same conversation,
what he said and what Stafford said.

THE COURT: There is a difference as I see it.

To come back to the question which I think you are entitled to prove, that is you are entitled to prove a misrepresentation. You are not entitled to prove, where timeliness is not in issue, a report of misrepresentation.

MR. HILL: We are entitled to prove when we learned the truth.

THE COURT: But to bring it in through Giffen, it seems to me, particularly when you are going to be able

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to and have been told in advance you will be allowed to, to question IBM's key representative as to whether what Doctor Stern said was true, viz-a-viz IBM, is the proper way to do it

MR. HILL: 'May I also ask him --

THE COURT: Who?

MR. HILL: Stafford, when he so advised Satra.

THE COURT: Yes, you may.

off the record.

(Discussion off the record.)

THE COURT: There has been a substantial further discussion about whether the plaintiff wishes to be free to argue to the jury that the firing of Doctor Stern was in bad faith and a culmination of other so-called chiseling behavior on the part of the defendants. I believe I correctly state the plaintiff's attorneys' position in saying that they do wishto be able to make such arguments to the jury and under those circumstances, and in light of, to a lesser degree, the flavor of plaintiff's opening statement, I believe it is relevant that the jury know what Mr. Stafford may have said adversely to the plaintiff to Mr. Giffen in Moscow and I will permit such question to be asked.

I would be prepared to advise the jury that
Mr. Giffen's report of what Mr. Stafford said did not consti-

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tute evidence of the truth of the content of Mr. Stafford's statement, but Mr. Hellerstein has indicated to me hat if I am going to allow the testimony to go in, he would prefer that it go in without a cautionary instruction, so none will be given.

(In the presence of the jury.)

MR. HILL: May I proceed, your Honor?

THE COURT: You may, Mr. Hill.

BY MR. HILL:

O Mr. Giffen, did there come a time subsequent to this Moscow meeting when you were in Leningrad with Mr. Stafford?

A Yes.

Q Did you have a conversation with Mr. Stafford during the course of his stay in Leningrad on the subject of the relationship between Satra, IBM and Doctor Stern?

A Yes.

Ω Would you tell us as best you now recall, everything that was said at that meeting?

A Yes. We -- I arrived in Leningrad to help in some negotiations. I arrived in the evening, I believe, on a Friday or a Saturday night, I don't recall exactly when.

We held a short business meeting, that is the Satra people and IBM, concerning the negotiations that were to take place

the following day and in subsequent days. We then adjourned to dinner. During or shortly after a dinner conversation, Doctor Stern and I -- excuse me, Mr. Stafford and I were discussing some subject and somehow the term, Mr. Stafford's friend, Doctor Stern, or IBM's friend, Doctor Stern, came Mr. Stafford stated to me, "What do you mean, our friend?"

I said, "Well, he is your friend."

The he said, "No, he is not our friend, he is friend," or words to this effect.

I said, "But didn't Doctor Stern talk IBM into going into the Soviet market?"

He said, "No."

I said, "Didn't he convince IBM to go with Satra?"
He said, "No, of course not."

Then he said something to the effect of, "I didn't even know Doctor Stern wasn't an employee -- was not an employee of Satra Corporation until a week or two weeks ago," or perhaps it was the last visit that we had all had to Moscow.

I said to him, I think in substance, that this was a surprise to me because on two previous occasions at least I was under the impression that he had done things that led me to believe that Doctor Stern and he were very close, or that Doctor Stern and IBM were very close. For

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example, I told Mr. Stafford that we had told Mr. Stern not to come to Moscow, it was Mr. Stafford who called Mr. Oztemel to state that Doctor Stern ought to come to Moscow. On another occasion when we were in Moscow the previous time I told Mr. Stafford that I wanted to see him for a few minutes. He said, "Fine, some time during the week."

Three days later or a day later or some point later, Doctor Stern came to me and said, "What do you want to see Mr. Stafford about alone?"

So I told Mr. Stafford that I had concluded from all of these contacts and the prior contacts that Mr. Stern was very close -- or, Doctor Stern was very close to IBM. He stated, no, that wasn't the fact.

I said, "Don't you need Doctor Stern for his systems capability?"

Mr. Stafford said something to the effect, "What do we need him for, we have X hundred thousand employees who have exactly the same capability at IBM."

I said, "Would you be willing to repeat this to Mr. Oztemel?"

He said, yes, he would. I said that I would be talking to him, or something of that sort, and the conversation was over.

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Giffen-direct

O That's all you now recall?

A That's all I recall, the substance of what I recall.

O Did there come a time when Mr. Stafford repeated the substance of what he told you to Mr. Oztemel?

A Yes, I believe it was approximately a week later in London. There was a meeting in which Mr. Stafford repeated that conversation to Mr. Oztemel.

MR. MILL: I have no further questions, your Honor.

THE COURT: Thank you.

(Continued on page 532.)

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Giffen-cross

CROSS-EXAMINATION

BY MR. FISHER:

Q What was the date of that meeting with Mr. Stafford?

- A Which meeting?
- Q The first time you had a discussion with him in Russia.
- A I don't recall. I believe it was sometime in October. It was during the Leningrad exhibition.
- Q That is after the agreement of August 31st with Dr. Stern; is that correct?
 - A That's correct.
- Q That's after IBM signed its contract with Satra on or about September 22, 1971; is that correct?
 - A That's correct.
 - Ω It was sometime in October, you said?
 - A I believe it was in October, yes.
- Q Prior to that date in October, had you made any inquiry of any IBM officials as to anything that Dr. Stern had told you?
 - A Did I, personally?
 - Q Yes.
 - A Prior to?
 - Q Prior to the time that you made those inquiries

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1	rgmch 2 Giffen-cross
2	of Mr. Stafford in Russia in October 1971.
3	A Yes.
4	Q The same inquiries you made of Mr. Stafford?
5	A The inquiry I attempted to make of Mr. Stafford
6	in Moscow in September, I had planned to ask the same
7	questions, but I didn't eventually do that.
8	Q My question is, did you ever ask those questions
9	of any IBM people
10	A No.
11	Q prior to the time you signed that Satra
12	signed an agreement with Dr. Stern on August 31st?
13	A No.
14	Q And prior to the time Satra got in hand a
15	contract signed by IBM?
16	A No.
17	Ω Weren't you curious about the answers to those
18	questions prior to those dates?
19	A Yes.
20	Q But you didn't go and inquire, did you?
21	A I did not inquire, no.
22	Q Was it important to you at that time?

Q Did you believe that Dr. Stern convinced IBM to enter the Soviet market prior to August 31, 1971?

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Giffen-cross

A I was skeptical, but I felt that since he had been producing everything, everything he said had come true, I felt that there may be some substance in it and that perhaps my skepticisms were unfounded.

Q Did you believe that he convinced IBM to enter the Soviet market prior to August 31, 1971?

A I felt that he might have had an influence on it. I was skeptical as to that, but after he had produced, I felt that, after all, I didn't want to do anything to hurt the relationship.

Q So, it is possible that you believed that he convinced IBM to do business with the Soviet Union?

A That's not what I said.

Q Do you know how IBM makes a decision on a policy matter such as entering the Soviet market?

A Do you know? I don't know.

O You don't know?

A No.

Q Do you know how big a company IBM is?

A I don't understand that question.

Q Do you know how large a company it is?

A I don't understand that question.

THE COURT: Measured by what?

MR. FISHER: Volume of annual sales.

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Giffen-cross

- A Approximately \$8 billion per year.
- Q Do you have any idea of how companies that size make their decisions?
 - A Yes, I do.
- Q Do you think their decision had anything to do with the fact that the United States of America decided to open up trade with the Soviet Union?
- A Probably partially. Only partially.
- Q And you believe that another partial reason is that Dr. Stern convinced them to enter the Soviet market?
- A At that time I thought it was entirely possible that if Dr. Stern had the contacts that he professed to have, that he might have somehow influenced them.
- Q On the basis of that assumption, you decided it's time to get rid of Dr. Stern since he, in fact, told us --
 - A I don't understand the question.
 - Q Let me finish the question.

MR. HILL: I am going to object to that.

THE COURT: Overruled.

Q Is it true that on the basis of what Mr.

Stafford told you after you signed an agreement with Dr.

Stern, after you got the IBM contract, that you decided to go separate ways with Dr. Stern and tell him you would not honor your agreement with him?

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1	rgmch 5 Giffen-cross
2	A No.
3	Q What was the basis of your not honoring your
4	agreement with Dr. Stern?
5	A After Mr. Stafford had stated to me the substance
6	of what I have already testified to in Leningrad, I
7	decided that I must have him repeat the same thing to Mr.
8	Oztemel. After he repeated it
9	Q Were you present when he repeated that to Mr.
10	Oztemel?
11	A Yes.
12	MR. HILL: Your Honor, it would be very helpful
13	to me if Mr. Fisher would stay back here because I can't
14	hear him when he charges up front.
15	THE COURT: Would you do that, Mr. Fisher?
16	MR. FISHER: Yes.
17	A After my meeting with Mr. Stafford in Leningrad,
18	I asked Mr. Stafford to repeat the story to Mr. Oztemel.
19	After he had repeated it to Mr. Oztemel I felt that it
20	was the duty of Satra Corporation to get a legal opinion
21	as to the status.
22	MR. FISHER: I object to what he felt.
23	A I decided that it was

the reasons that impelled you to sever the relationship

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THE COURT: I think the question was what were

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1	rgmch 7 Giffen-cross 538
2	Q Did Dr. Stern ever tell you in words, "I control
3	IBM"?
4	. No.
5	Q He never said that?
6	A No.
7	Q After you had your meeting, your first meeting
8	with Mr. Stafford in Moscow, did you ever ask Dr. Stern for
9	an explanation of what you thought Mr. Stafford told you?
10	A Could you repeat the question?
11	Q Did you ever ask Dr. Stern for an explanation after
12	you had your meeting with Mr. Stafford?
13	A No, not that I recall.
14	Q Did you ever go to anyone else at IBM, Mr.
15	Stafford's bosses, and ask them the same questions
16	you asked Mr. Stafford?
17	A No.
18	Q Isn't it true that after you had your conver-
19	sation with Mr. STafford Satra hired Mr. Stafford?
20	A I don't know.
21	Q You don't know?
22	A No.
23	Q Have you ever heard that?
24	A I have heard rumors to that effect.
25	Ω But you don't know that it's a fact?

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1	rgmch 8 Giffen-cross 539
2	A I don't know it as a fact.
3	Q Did you ever discuss with Mr. Stafford his leaving
4	IBM and going to work for Satra?
5	A During what period of time?
6	Q Any period of time.
7	A No, not that I recall. I may have upon occasion
8	discussed Mr. Stafford working for a major U.S. corporation
9	as opposed to being a private consultant, but I oun't
10	believe we ever discussed with Mr. Stafford, myself or at
11	any meeting that I was present at, Mr. Stafford coming to
12	work for Satra.
13	Q Did Mr. Stafford ever tell you he was happy or
14	unhappy with staying on with IBM and he was considering
15	going out and becoming a private consultant?
16	MR. HILL: I object. I don't know what this has
17	to do with anything.
18	THE PLAINTIFF: Ha, ha.
19	THE COURT: Dr. Stern, please don't make any
20	gestures or motions. The jury will disregard Dr. Stern's
21	gesture.
22	I will allow the question.
23	Read back the question, please.
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25	A Yes, subsequent. I think it was somewhere around

THE COURT: Overruled. The testimony with regard

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to Mr. Stafford is an issue that deserves full explanation.

A I believe the answer was yes, Mr. Stafford had come to work on East European markets.

Q He had come to work for Satra on the East European markets?

A Yes.

Q Does that include the Soviet Union?

A No. I think the time they were talking about East Germany.

Q While you were in the Soviet Union when you had these discussions with Mr. Stafford, did you ever discuss the contract between Satra and IBM and Dr. Stern?

A What do you mean, "discuss"?

Q Did you ever tell Mr. Stalford, either at the first meeting in Russia or the subsequent meeting in England with Mr. Oztemel, about Dr. Stern's contract?

A I believe we stated to him, or I stated to him either at Leningrad or in London, that Dr. Stern was not an employee of Satra Corporation; that we had a contract with him for the IBM deal.

Q Did you, in London or in Moscow, tell him what the terms of the compensation that Dr. Stern was to receive under his contract with Satra was?

A I don't really recall. I think he might have

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said something to the effect it was a partnership, but I don't recall that any specifics were ever brought up.

Q Did you tell him that he was to share fifty fifty in the revenues to be derived from IBM?

A I don't recall if we ever said that specifically. We might have said that it was an equal partnership, but I don't recall.

- Q An equal partnership on the IBM transaction --
- A That's correct.
- Q You told that to Mr. Stafford?
 - A Yes, I think so.
- Q He knew that prior to the time he entered into any relationship with Satra thereafter; is that correct?

A If he in fact entered into any relationship with Salra thereafter.

Q Didyou believe prior to the August 31st agreement that Dr. Stern had any unique abilities that were necessary to service an IBM contract?

A Well, as I stated previously, I didn't understand what systems capability meant. He stated he had some systems capability, and I didn't understand the role of such a capability with a company the size of IBM.

Q I believe you stated on direct examination that you believed a company the size of IBM must have had many

fees from Satra; is that correct?

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THE COURT: Sustained.

You can answer yes or no and you can explain your answer, but the question is whether Dr. Stern introduced IBM to Satra.

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1	rgmch 14 Giffen-cross 545
2	A If you mean by introduction that he received a
3	phone call from IBM
4	MR. FISHER: I move to strike his answer, your
5	Honor.
6	THE COURT: Sustained.
7	Give us your understanding of what "introduction"
8	means and then tell us if he did that or not.
9	MR. FISHER: Let me withdraw the question and
10	rephrase it since the witness seems to be having some
11	trouble with it.
12	Q I asked you at Page 108 and then I repeated the
13	same question at Page 114, and these were the questions
14	I asked you and these were the answers you gave me:
15	"Q What clients or prospective clients did Stern
16	introduce to Satra?
17	"A To the best of my knowledge, three.
18	
19	"A Xerox Corporation, Stromberg-Carlson and IBM."
20	Then at Page 114, I say to you
21	
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2	MR. HILL: May I be permitted to make an objection

THE COURT: Yes. What is the objection?

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your Honor?

MR. HILL: The objection is I think once again this is improper use of these depositions. If he wants to ask Mr. Giffen, "Were you asked these questions and did you give these answers," that's fine, or --

MR. FISHER: That's what I am going to do.

That's what I am about to do.

MR. HILL: Ask him one at a time, your Honor, and not skip around.

MR. FISHER: All right.

MR. HILL: Could I ask for one other thing,
your Honor. I think it would be helpful to the
witness -- since this is a deposition that runs several
hundred pages -- if he had it in front of him so he can
follow it.

THE COURT: Very good.

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1	jgd Giffen-cross 547
2	THE COURT: The first one is at page
3	MR. FISHER: The first one is on page 108, line 7.
4	O The questions I asked at the deposition and the
5	answers you gave on that page were as follows:
6	"O What clients or prospective clients did
7	Doctor Stern introduce to Satra?
8	"A To the best of my knowledge, three.
9	"Q Can you tell me which ones?
10	"A Cerro Corporation, Stromberg Carlson and
11	IBM."
12	Were those questions asked of you and did you
13	give those answers under oath?
14	A Yes, I did.
15	Ω And are they truthful?
16	A They are truthful insofar as my interpretation
17	of "introduction" is
18	MR. FISHER: I move to strike that, your Honor.
19	THE COURT: Mr. Hill will have a chance on
20	redirect to bring out anything he thinks is necessary. Let's
21	just answer the questions.
22	THE WITNESS: Fine.
23	O I now direct your attention to page 114, the
24	question on line 3 and the answer on line 4:
25	"O Did Doctor Stern introduce Satra to IBM?

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1	2jgd	Giffen-cross 548
2		"A To the best of mv knowledge he did, yes."
3		Were you asked those questions?
4	A	Yes.
5	Ü	Did you give those answers?
6	A	Yes.
7	Q	Were they truthful?
8	A	Yes.
9	Q	Now, did Satra enter into any contracts with
10	any of the	companies to which Doctor Stern introduced them?
11	A	Yes.
12	Q	Which ones?
13	A	IBM.
14	O.	Did he receive any compensation for the intro-
15	duction to	the Stromberg Carlson Company or the Cerro
16	Corporation	n?
17	A	Did he receive any compensation from Satra
18	Corporatio	n?
19	δ	Right.
20	A	No.
21	Ó	Do you know whether he received compensation from
22	the other	companies?
23	A	I don't know. I know he did not receive it from

Q You said he attended several meetings on Cerro

Satra Corporation.

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Corporation with Satra; is that correct?

- A Correct.
- O He participated in the negotiations, did he not?

 Well, let me strike the word "negotiations."

 He participated in the discussions; is that correct?

A Yes.

Q And those discussions did not lead to a contract; is that correct?

A That's correct.

Q And so he wasn't paid?

A Correct, for the activities which resulted in nothing.

Q Right. And I think you just stated, with respect to IBM, that the introduction led to a contract; is that correct?

A Well, proceeding from the initial contact with IBM, it led to a contract.

Q And is it your understanding that his compensation for the introduction of IBM to Satra and whatever else he did in connection with that contract is governed by a contract between Satra and Doctor Stern?

- A Could you repeat the question, please?
 - Q Let me rephrase it.

Is it your understanding that Doctor Stern and

2 Satra agreed that Satra would compensate Doctor Stern for

3 the IBM situation?

A It is my understanding that there was some sort of an understanding between Satra and Doctor Stern. Whether that is an agreement, whether that is a -- whatever, I don't know.

THE COURT: You had nothing to do with working out the agreement between Doctor Stern and Satra?

THE WITNESS: Very little.

THE COURT: What do you mean by "very little"?

instructed to draw up the language of the agreement, I was not instructed to carry on the negotiations with respect directly to Doctor Stern, although I did as a member of the executive committee sit in on certain discussions that the executive committee had with respect to the relationship between Doctor Stern and Satra, and that's what I mean by "very little."

THE COURT: Thank you.

BY MR. FISHER:

I placed before you, Mr. Giffen, Plaintiff's

Exhibit C, which is the agreement of August 31 between

Mr. Stern and Mr. Satra. I ask you whether that is the

document that was supposed to govern the compensation to be

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paid to Doctor Stern if Satra entered into a contract with IBM?

A It appears to be the same document.

Q Did you ever have discussions prior to the execution of that document, Plaintiff's Exhibit C, with any of the personnel at Satra wherein you or they stated that alternative proposals were to be made to Doctor Stern, one of which would give him a straight salary and he would come to work for salary, and one of them would give him 50-50 of any revenues to be derived from IBM, if in fact they were derived?

A Those may have been one of many proposals, or two of many proposals, that were given or discussed between Doctor Stern and Satra. There was a very fluid situation and there were many proposals being discussed each day.

Q Well, did you ever discuss the high degree of risk that Doctor Stern would encounter if he accepted 50-50 of any revenues that might be derived from IBM? Did you ever discuss that with anyone in Satra prior to August 31?

A In a general way we discussed the fact that if
Doctor Stern were to work on a percentage basis, that the
risk that he would be taking would be any expenses that he
might incur between the time when an agreement with IBM was
signed and the time when IBM were to actually deliver any

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products or technology to the Soviet Union, yes.

Q And how about the possible risk that there may never be a contract with IBM?

A I didn't consider that a risk.

Q Well, if after August 31, 1971, no contract was entered into with IBM, was there any understanding with Doctor Stern to pay him compensation?

A If no contract was signed with IBM?

Q Right.

A Then Doctor Stern would get nothing, that's correct.

(Continued on next page.)

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Q Prior to August 31, 1971, did you care which alternative Dr. Stern accepted?

MR. HILL: I object to that.

THE COURT: Did he personally care?

MR. FISHER: Yes.

O Was it of any interest to you or any concern to you which alternative he accepted?

MR. HILL: I'll withdraw the objection.

THE COURT: All right.

A I don't understand which alternative you are talking about.

Q The alternative of coming on board as a salaried employee or sharing in revenues that might be derived from

A At what point in time?

o _Prior to August 31st.

discussing Dr. Stern coming on as a salaried employee at the end of the negotiations. As I testified previously, there were two discussions that were going on. One discussion was Dr. Stern coming on as an employee. The second discussion was Dr. Stern getting a fee or a consultant fee of some sort plus a commission.

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Now, it was very early in the proceedings I believe that Dr. Stern made it clear to us that he did not want to come in as an employee. It may have been discussed between Mr. Oztemel and Dr. Stern or between Mr. Mott and Mr. Stern, but I just don't at this time have any recollection of that alternative being discussed towards the end of the discussions.

So that if you are asking, if your question is, did I have a preference as to whether or not, personally have a preference as to whether or not, Dr. Stern would come on as a consultant plus a commission or to be given a straight commission, yes, I had a preference as between those two alternatives.

O Prior to August 31, 1971, isn't it true that your only concern vis-a-vis Dr. Stern was whether or not he could assist in getting the IBM contract?

A It was one of the main concerns.

O You didn't really care what the form of compensation was as long as you got the IBM contract, isn't that correct?

A That is not exactly true. I was concerned that we get the IBM contract, but there is a price at which I would not have been -- if my recommendation had been asked, there is a price which I would have recommended that we

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O Who made that decision? Mr. Oztemel?

A Who made what decision?

O The price that Satra was willing to pay to get the IBM contract.

A I am not sure the decision was ever made.

THE COURT: I don't follow you. Satra did
make a proposal of August 31st to Dr. Stern, did it not?

THE WITNESS: Correct, yen.

THE COURT: Then let's put it this way: Who made the decision as to what would be included in the terms of that proposal?

THE WITNESS: I would assume that was Mr. Oztemel.

MR. FISHER: We'll save this line of inquiry for Mr. Oztemel, when he testifies.

Now, did you learn, on or about August 31 or September 1, 1971, that Dr. Stern had accepted one of the alternatives contained in the letter of August 31?

A Yes.

O And did you learn it contemporaneously therewith?
When did you learn it?

A I don't recall exactly. I'm sure it was shortly -- when I say "shortly," probably within the same day that

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he had accepted it.

O And did Dr. Stern thereafter arrange and attend meetings with IBM in an effort to obtain a contract with IBM?

A Yes.

Q And did he participate in negotiations?

A He participated in many of the discussions. I don't know whether you would characterize these discussions as discussions or negotiations. He participated in many of them insofar as I knew. I wasn't present at all of the discussions.

Of I ask you to look at page 273 of the transcript of your deposition, line 12. Do you have that

A Yes.

O The question was asked of you:

"Q And did Dr. Sern participate in those negotiations?

"A He did."

A I answered that already. I said that he did insofar as they were characterized as discussions or negotiations, yes.

O He participated in the negotiations.

A Yes.

O How many meetings did you attend with IBM prior

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1	JG 5 Giffen-cross
2	to your leaving for Moscow in Spetember 1971?
3	Λ I think two.
4	O Two. And do you know how many meetings Dr. Sterr
5	attended?
6	A I have no idea.
7	O Were there more than two?
8	A I had no idea.
9	THE COURT: He said he had no idea.
10	O But every meeting you attended he was with you,
11	is that correct?
12	A The two meetings that I attended Dr. Stern I
13	believe was present.
14	o And did Mr. Oztemel attend meetings at which you
15	weren't present with IBM?
16	THE COURT: How can he know who was at a
17	meeting that he wasn't present at?
18	O When did you leave for the Soviet Union in Sep-
19	tember 1971?
20	A The exact date?
21	O Approximately.
22	A Approximately the middle of September.
23	O So on September 22, 1971, when the IBM contract
2	was signed, you were in Moscow, is that correct?

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- Q And was Mr. Oztemel in Moscow also?
- A I don't recall whether he was or not. I think he was.
 - Q He was out of the country, is that correct?
- A I think so, yes.
 - O So on the date that the IBM contract was signed, September 22, 1971, both you and Mr. Oztemel were out of the country?
 - A Yes. We had already agreed to all the basic principles.
 - MR. FISHER: I move to strike the answer, your Honor, other than the "yes."
 - THE COURT: Sustained. The jury will disregard that.
 - O Do you know, were you aware, whether or not Dr. Stern was involved in discussions with IBM concerning the obtaining of a contract?
 - A I have no personal knowledge of that.
 - O Did Dr. Stern make the introductions to IBM which led to the negotiation which led to the contract?
 - A I think I've already answered that question.
 - 0 Was the answer yes?
 - A Yes.
 - MR. FISHER: Your Honor, I think this may be

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an appropriate time to break. I am about to go into a lengthy area.

THE COURT: I didn't realize you had a lengthy area in mind. If you do, I agree with you.

We will resume at two o'clock, ladies and gentlemen.

(Luncheon recess)

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AFTERNOON SESSION

2:00 p.m.

(In open court; jury present.)

THE COURT: Gentlemen, there is going to be a meeting that I have to attend at 4:15. I want to advise you of that. There is not much we can do about that. I advised the attorneys before, but I haven't told the jury that I am going to be involved with other matters tomorrow morning, so we will not have a session tomorrow morning.

I ask you to be here and ready to go at quarter of 2:00 tomorrow afternoon, so we can pick up at least that much time.

Mr. Fisher.

JAMES HENRY GIFFEN, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. FISHER:

Q Mr. Giffen, going back to the first relationship between Satra and Dr. Stern concerning the Kama River project of which you testified on direct and to the services that Dr. Stern performed on the Kama River project, in your estimation did he assist Satra in their efforts in Washington and elsewhere in connection with the Kama River project?

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1	rgmch 2 Giffen-cross 560
2	MR. HILL: Objection as to form.
3	THE COURT: Overruled.
4	A Yes.
5	Q Were his services of value to Satra?
6	A Yes.
7	Q When did he perform those services for Satra?
8	A You are asking for the term
9	Q The dates.
10	A The dates. To the best of my knowledge it was for
11	a period between April or May of 1971 and June 1971.
12	Q Did there come a time at the outset of the relation-
13	ship when you had a conversation with him concerning
14	compensation to be paid to him?
15	A For the Kama River project?
16	Q Right.
17	A I believe so, yes.
18	Q Was that prior to the time he started his work
19	in April or May?
20	A Yes. I believe so.
21	Q So you had a conversation with him and then he
22	began to work on the project; is that correct?
23	A Correct.
24	Q His efforts carried on from May into June; is
25	that correct?

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- A Sometime during that time.
- Q When did they cease the Kama River project?
- A I don't recall the exact date, but as I testified before I thought it was sometime around June or July of
- Q So he put in approximately a minimum of two months on the project?

A No, that's not what I testified to. He worked for that period. It was the beginning to the end of that relationship, but during that period of time he might have worked, for all we knew, one day a week or two days or three days a week. We didn't know.

THE COURT: It was over a period of two months?

THE WITNESS: It was over a period of, say, two months, May and June, but whether it was for the full two months or not, I can't testify to.

- Q Do you know what efforts he was extending on behalf of Satra during that period of time?
 - A In terms of the total time spent?
 - Q No. What he was doing.
- A :Generally, we had an idea of what he was doing,

THE COURT: I take it your idea of what he was doing came simply from his reports of what he was doing?

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THE WITNESS: Yes.

- Q Did you attend meetings with him in Washington?
- A Yes.
- Q Was he in attendance at meetings with you with Senator Hugh Scott and other United States Senators in Washington?
 - A Yes. So far as I can recall.
 - Q Did he participate in those meetings?
- A In the sense that he was present there the same as the rest of us, yes.
 - O Were the Russians involved in those meetings?
- A Yes.
 - Q Did those meetings take place in the month of May?
 - A Yes.
 - Q Did he participate in the meetings with the Russians --
 - A I am confused with your term of the participation.
 - Q In Washington?
 - A He was present during the emetings that we had with the Washington officials.
 - Q Did he participate in the meetings other than just being physically present?

THE COURT: Do you mean did he speak?

MR. FISHER: Yes.

A He spoke. But did he enter the negotiations or discussions from time to time, I can't recall whether he did or not.

Q When you had your discussions with him at the outset of your relationship, that is before he started to work on the project --

A On the Kama River project?

Q On the Kama River project, you discussed comepnsation with him, I believe you said; is that correct?

A I think I have stated to the best of my knowledge we had some discussions, and I believe it was prior to the Kama River delegation coming to the United STates, that he would perform some services, but it might have been during the time of their presence here or it might have been after, I just don't recall.

Q He had those discussions with you about compensation, right, not Mr. Oztemel?

A I'm not sure; it might have been with Mr. Oztemel, or Mr. Oztemel and myself, or just myself. I just can't recall.

THE COURT: Do you'recall having some discussions with him?

THE WITNESS: Yes, I had some discussions with him

myself personally -- either in the presence of Mr. Oztemel or must myself.

Q Were you delegated the responsibility of handling the Mack Truck relationship to the Kama River project?

A No. Mr. Oxtemel was in charge of the entire project, but I did as much as I could for the entire project.

- Q What was your role?
- A That is a difficult question.

We had many different types of roles. For example, one role would be to arrange the schedule for the Russians. We were required to put together an itinerary on almost a thirty-minute basis of where they would be and who they would be seeing. We were required to be with the Soviets at all times during their stay in the United States.

In that regard, I was involved in preparing the schedule which we would then submit to Mr. Oztemel and show him, so he was apprised of what was going on with respect to the scheduling, and we also traveled with the Soviets.

There were many different kinds of things that we were doing.

What was the date that you said that Mack Truck withdrew from the Kama River project?

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project?

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Yes.

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Q To what extent? Can you give me the amount that were involved in the issuance of export licenses?

A You asked me on the deposition and I believe
I told you then, and I have to tell you now, that I don't
have a clear idea of the total volume. I would say
there were somewhere between 100 million and 4 or 5,
600 million dollars in licenses that were issued to all
American companies, not necessarily to the clients of
Satra Corporation.

Q Has Dr. Stern ever been paid any monies other than the initial \$10,000 paid to him on the Kama River project?

A I do not know.

Q You don't now whether or not he received the \$15,000 that was the subject of prior testimony here?

A I do not know.

Q When you had your initial discussion with Dr. Stern, isn't it true that you didn't make any conditions on payments to him; that is, you didn't make payment conditional on any events occurring?

A You are referring to which initial discussion?

Q I am talking about the first time you discussed Dr. Stern's getting paid when he told you his rates are \$500 a day.

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2	At that time did you tell him there would be any
3	conditions on his getting paid?
4	A Not for the first two-week period.
5	Q At that first time you a scussed compensation
6	with him, did you tell him there would be a condition on
7	his getting paid, any condition?
8	A With respect to the two-week period?
9	Q With respect to anything.
10	THE COURT: My understanding, Mr. Fisher, is
11	that the discussions related to a two-week period
12	is that correct?
13	THE WITNESS: That's correct, the initial
14	discussions.
15	THE COURT: That he was to be paid \$5,000 for
16	the two weeks without conditions.
17	THE WITNESS: Without conditions, that's correct.
18	THE COURT: Except for the condition that he
19	would do whatever he was expected to do.
20	THE WITNESS: Yes, of course, to perform
21	services for us.
22	Q He worked two weeks in May?
23	A Pardon?
24	Q Did he work for two weeks in May?
25	A I testified previously, I don't know when that

period was. He worked for a two-week period. It was in April or May. The first two-week period was over and we then, as I previously testified, had a meeting with him.

Q You and Mr. Oztemel?

A I recall it was Mr. Oztemel and myself or Mr. Oztemel and Mr. Stern or myself and Mr. Stern, or it could be a combination.

Q What did you say to him and what did he say to you?

THE COURT: Go ahead. I thought we had been

through this, but go ahead.

A During the discussions, the substance of the discussions were that we could not continue at the rate of \$5,000 for every two weeks; that we thought this was going to continue for a long period of time and that we felt that we had to come to some arrangement that was a little more definitive, and it somewhat limited the relationship.

So we came up with the plan that he would be paid \$10,000 if export licenses were not granted within some reasonable period of time and \$25,000 if they were.

Q What is that reasonable period of time, do you recall?

A I believe at the time that we left it rather open; that we kind of both agreed that "reasonable time" would be defined by the situation; that it would become

1	rgmch 11 Giffen-cross . 569
2	clear to both of us what was reasonable and what was not
3	reasonable.
4	Q Did there come a time when export licenses were
5	issued?
6	A I have already testified to that; yes.
7	Q Did Dr. Stern get the \$15,000?
8	A No, because it wasn't within the reasonable
9	period of time.
10	MR. HILL: I have to object. The witness is
11	constantly interrupted every time an answer comes in that
12	Mr. Fisher doesn't like.
13	THE COURT: Sustained.
14	MR. FISHER: I like that answer. Let's get into
15	the answer.
16	A We felt it wasn't a reasonable period of time
17	and he accepted the check.
18	Q So he didn't get the \$15,000, correct?
19	THE COURT: That's been stated, Mr. Fisher.
20	Q During the time that Satra first met with IBM
21	in 1971 and up until the time that IBM signed the contract
22	with Satra on September 22, 1971, was Dr. Stern in charge
23	of setting up meetings and attending meetings?
24	A With who?
25	Ω With IBM.

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A Dr. Stern we constantly tried to arrange
meetings ourselves. Dr. Stern said no, he had control
of the situation. He did not want us to contact anyone
at IBM.
Q Is the answer, then, yes?
The answer then, is ves.

Q And you were not in charge of that particular function at that particular time?

A No.

1	rgd Giffen-cross 571
2	Ω After Doctor Stern was told by Satra that his
3	services were no longer required, were you in charge of
4	setting up contact with IBM?
5	A When was that?
6	O After October 1971, were you then placed in
7	charge of liaison with IBM in place of Doctor Stern?
8	A I don't believe so. I don't really know that
9	there was a formal statement made that Mr. Giffen would be
10	in charge of IBM. It was an agreement there was an
11	agreement between Satra and IBM and we all did what we had
12	to do to make the relationship a worthwhile one.
13	O Then you functioned in an effort to service the
14	IBM account?
15	A Insofar as I serviced the 30 or 40 other clients
16	that we had, along with the people within Satra Corporation.
17	Ω I think you testified on direct examination that
18	Doctor Stern told you that IBM was interested in Satra
19	because of him and you told Doctor Stern that you thought
20	IBM was interested in Satra because of Mr. Oztemel. Is
21	that a fair statement of what you said?
22	A The substance of what I said was something like
23	that, yes.

O What Doctor Stern told you?

A My problem was this: I found problem -- I had some scepticism in believing it, but because Doctor Stern seemed to be performing those things which he said would come true, that is, he said he could arrange a meeting and a meeting would be arranged, because when I would try and contact IBM, as I did when I tried to talk to Mr. Stafford in Moscow and suddenly Doctor Stern came back with the information -- because Mr. Stafford got on the phone and asked Mr. Stern to come -- for Doctor Stern to come to Moscow at a time when we had told him that we didn't think it was necessary for him to be there, I began to believe that in fact some of the things that Mr. Stern was telling us were true, and he had control over IBM.

Q When Doctor Stern told you that the reason that IBM was interested in Satra was because of him at that time, did you believe him?

A Yes, with some scepticism.

O The scepticism was voiced in your stating to him at I think IBM is interested in us because of Mr. Oztemel?

A I told him I just couldn't believe it.

Q Was your scepticism confirmed on September 17,
1971 when IBM gave to Satra a letter of intent, Plaintiff's
Exhibit MM in evidence?

- A Was my scepticism confirmed that he was not --
- Q That IBM really wasn't interested in Satra because of Doctor Stern?

A No. Quite to the contrary. When I received that agreement I felt that Doctor Stern's participation was something that IBM was interested in because he did in fact produce what he said he was going to produce.

O I refer you to page 1 of the letter of

September 17, 1971, the last sentence which says, "It" -
referring to the agreement -- "will also be terminable by

us at any time if Mr. Oztemel should cease to be actively

engaged in your operations."

A Right.

O When you read that --

A Yes.

o -- did you then believe that the reason that IBM was interested in Satra was because they wanted Doctor Stern or that they wanted Mr. Oztemel?

A I don't think it was alternative. I think at that point I said to myself, "Well, we have managed to convince" --

O I object to what you said to yourself.

MR. HILL: He asked for his belief, your Honor.

THE WITNESS: He asked for my belief.

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THE COURT: Would you read the question back,

Giffen-cross

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(Question read.)

THE COURT: The objection is overruled.

Go ahead.

You want an answer to the question of my belief?

O Go ahead and continue.

A At that time I believed that Satra Corporation had succeeded in convincing IBM that Mr.Oztemel's services were in fact necessary. That is not mutually exclusive of the fact that they might have also needed Mr. Stern's -or Doctor Stern's services also.

O You said Doctor Stern said, "IBM is interested in Satra because they want me." You then get a letter on September 17, 1971 that says they want Mr. Oztemel. Did you ask anyone at IBM at that time, on or prior to September 17, 1971, "Do you want Doctor Stern?"

A No, because --

MR. FISHER: I object to the "because," your Honor, and I move to strike everything after it.

THE COURT: The "because" can be brought out on redirect.

O When you had your conversations with Mr. Stafford in October 1971, you testified that you told him Doctor Stern

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1	575 Siffen-cross
2	had a contract with Satra and you believe or you are not
3	overly sure one way or the other, I believe you said, as to
4	whether you discussed the terms of the contract, but you
5	believe so; is that correc
6	A No. You asked the question of whether or not
7	on October 17 or subsequently, during our discussions in
8	London on a Saturday night was a contract discussed and I
9	said yes.
10	Ω In Europe in October 1971 you had two meetings
11	with Mr. Stafford. At those meetings you discussed the
12	terms of Doctor Stern's contract; is that correct?
13	A Correct.
14	Ω Did Mr. Stafford tell you to take a good lock
15	at that contract?
16	A I believe he said something in that substance,
17	yes.
18	O Thereafter he went and worked for Satra; is that
19	correct?
20	MR. HILL: I object.
21	MR. FISHER: I have no further questions.

THE COURT: All right.

(Continued on next page.)

MR. HILL: I have just one question, your Honor.

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2 REDIRECT EXAMINATION

BY MR. HILL:

Q Mr. Giffen, in the course of your direct before

lunch you were asked a series of questions about whether

Doctor Stern had introduced Satra to IBM and there was considerable colloquy about the meaning of the word introduction.

Would you tell us now what you meant by the word introduction?

A The problem -- what I meant by the word introduction is as follows: Mr. Stafford told me in our discussion on October 17 --

MR. FISHER: I object, your Honor.

think that the question calls for a description of what you say you conceive to be an introduction of a commercial character.

A An introduction of a commercial character to me is when one unknown party is introduced to a second party.

Now, the problem in this situation -- the reason I don't consider this being an introduction --

MR. FISHER. I object.

THE COURT: I will allow the amplification.

A The reason I do not consider this to be an introduction is that it is my understanding that IBM tried to contact us anyway and had made - had gotten through to

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Giffen-redirect

Doctor Stern instead of the Satra people.

THE COURT: I will strike that answer, what your understanding is. It may or may not be true as evidence and may or may not be relevant.

THE WITNESS: An introduction does not mean to me when a company is trying to get in touch with you in any case --

THE COURT: We now know what your terms are. That's all we think is appropriate.

MR. HILL: Could he finish the latter part of that answer, your Honor?

THE COURT: Mr. Giffen may have pride of reason to believe that such prior contact would have occurred without Doctor Stern, but there is no evidence one way or the other in the record at the present time. The purpose of my allowing you to examine him was to determine what he meant when he said certain words. We now have that clear.

MR. HILL: Very well, your Honor, I have no further questions.

THE COURT: Thank you.

(Witness excused.)

MR. HILL: May I call Mr. Ralph Stafford, your

Your Honor, may Mr. Giffen now be excused?

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Honor?

bar?

Giffen-redirect

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THE COURT: Certainly.

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RALPH STAFFORD, called as a witness on

behalf of the defendants, having first been duly sworn by the Hon. Morris Lasker, testified as follows:

MR. HILL: Your Honor, may I approach the side-

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THE COURT: You may.

(Side-bar.)

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MR. HILL: To my knowledge, your Honor,

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Mr. Stafford has had three heart attacks and he also has

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cancer of the larynx. So, if we could take reasonably

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frequent recesses, I would appreciate it.

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THE COURT: Sure.

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(In open court.)

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THE COURT: If you have any difficulty or get

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tired, Mr. Stafford, let me know.

below, that's agreeable to me.

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THE WITNESS: It is just that I have a very low

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voice.

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THE COURT: Unfortunately, the acoustics are not

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very good in this room, so we will all have to do our best

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as Mr. Staffo, 'has some problems. If it should prove

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necessary and you would like to move down and sit down

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MR. HILL: Thank you, your Honor.

1	9rgd Stafford-direct 579
2	DIRECT EXAMINATION
3	BY MR. HILL:
4	O Mr. Stafford, where are you now employed?
5	What do you do for a living?
6	A I am self-employed and I am in the foreign trade
7	business.
8	Q You said you are self-employed. How long have
9	you been self-employed, sir?
10	A Since August of last year.
11	Q August of 1973?
12	A Right.
13	O Was there a period of time when you worked for
14	IBM?
15	A Yes. I worked for IBM from December of 1952
16	until July June 30th of 1972.
. 17	Q Could you briefly trace your responsibilities
18	within IBM through the period of your employment. Just give
19	us the high spots, with particular emphasis, I think, on
20	the last five to ten years of your time.
21	A From 1952 through 1962, various sales and sales
22	management positions in the United States, located in New
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25	Office, Europe, Central and East, IBM World Trade Corporation

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in Vienna, Austria.

From mid '71 until mid '72 I was Director of

Eastern Relations at IBM World Trade Corporation headquarters
in New York.

Q Was there a time that you were an employee of the Satra Corporation?

A Yes.

Or one of its subsidiaries?

A Yes. I was president of Satra Industrial Corporation, a subsidiary of Satra, from July 1, 1972 to August 1, 1973

O Your work prior to 1971 with IBM when you were in Vienna, what area of the world were you responsible for?

A I was responsible for the seven socialist countries of eastern Europe, not including the USSR, where there was no business.

O There was no business?

A There was no business activities there.

 Nould you briefly tell us what generally the situation within IBM was prior to 1971 with respect to trade with the Soviet Union?

A IBM had been thinking of trade with the Soviet
Union ever since IBM started the operations in eastern
Europe, which I personally started. However, a lot of study-

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ing was done. There were a lot of political considerations; a lot of decisions had to be taken, so it took a period of six to seven years before IBM could decide to go into the Soviet market.

(Continued on next page.)

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European companies who wanted to subcontract IBM equipment

and projects in Russia, that IBM would entertain such hids

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not directly but through third parties, in other words through large companies.

Then finally, when IBM decided to exhibit at the Leningrad Fair in 1971, that marked a quasi-decision to go into the Soviet market. It wasn't a cut and dried decision. It was a quasi-decision.

- Mr. Stafford, that decision to go to the
 Leningrad Fair, when did that come about, as you recall?
 - A I was advised of it in May.
 - o of 1971?
 - A Of '7.
 - O By whom were you advised?
- A By Mr. K. J. Hendricks on behalf of Mr. G. E. Jones, who was Chairman of the Board.
- Were you given anv responsibilities in regard to
 the Leningrad Fair at that time?
 - A Yes. I was in charge of it.
- In charge of IBM's participation?
- A Yes.
 - about this time in connection with IBM going into Russia?
 - A Yes, I did.
 - O What was that conversation, if you can recall?
 THE COURT: This was about May '71?

MR. HILL: Yes, your Honor.

A The conversation pertained to my changing positions from that of Managing Director of the Eastern European Operations to that of Director of Eastern Relations, which meant sole responsibility for the Soviet Union as a prime task, in New York headquarters.

At or about May of 1971, didyou have any personal knowledge with respect to the existence of something called Satra Corporation?

A No.

Q Did there come a time when you did get knowledge with respect to the existence of Satra?

A Yes. The first knowledge I got was when one of my managers in IBM gave me an article in a German publication called Der Spiegel, which detailed Satra's involvement in the Kama River project and had a picture of Mr. Oztemel = d'it was a rather flattering article to Satra.

THE COURT: When was that, Mr. Stafford?

THE WITNESS: Roughly the period May to June. It is hard to say. May, June, July. I came back -- it was a while ago, and my mind is not so clear any more on month to month, but it was -- I went to Europe back and forth that year about 20 times, so it is very hard to say when I came and when I went, but it was in May, June, the latest July,

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I would say.

Q Did there come a time in this period, I'll call it late spring or early summer of 1971 -- before I do that, let me show you Plaintiff's Exhibit UU and ask you what this is (handing)?

A That looks like the article from Der Spiegel.

MR. HILL: I offer it, your Honor.

THE COURT: Is it in German?

MR. HILL: Yes, your Honor?

THE COURT: Can the jury understand German?

Well, I'll accept it for what it is worth.

MR. FISHER: It is triple U, your Honor.

MR. HILL: I am sorry. It is triple U.

THE COURT: Plaintiff's Exhibit UUU?

MR. HILL: Yes, your Honor.

MR. FISHER: May I see it?

(Pause.)

MR. FISHER: No objection.

THE COURT: All right. Received.

(Plaintiff's Exhibit UUU for identification

received in evidence.)

BY MR. HILL:

O Did there come a time when you learned of the existence of a man by the name of Doctor Marvin Stern?

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- Q When was that, sir?
- A I was during a conversation with Mr. Jones, the Chairman of the Board of IBM World Trade Corporation, when he gave me a little three by five slip of paper with Doctor Stern's name and the Satra telephone number on it.
- Q And what happened then? Do you recall when this was, by the way?
- A Again, June, July, something like that. It was probably late July, beginning of August.
 - What happened then?
- A After my discussion with Mr. Jones I called up

 Doctor Stern at Satra --
- THE COURT: Did Mr. Jones instruct you to call him?
- THE WITNESS: Yes, he instructed me to call him and find out what he knows and what he wants.
- Q Did Mr. Jones say anything to you with respect to who this person was?
- A No. I can almost quote him verbatim, saying,
 "Would you call this man up and see what he wants? He has
 been trying to call me," or something like that.
- ? You say you called the Satra number. Was that the telephone number in New York?

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A Yes.

? What happened when you made that call?

A Well, they said Doctor Stern is out in California, and they gave me his number there and they said he is an early riser, so I can call him as early as 11:00 o'clock New York time, which I did the next day.

O And I take it you had a conversation with Doctor Stern?

A Yes, I had a telephone conversation. He said he would be happy to talk to me. I just told him that Mr. Jones instructed me to call him, and we arranged for a meeting in New York.

O Was anything else said in that telephone call?

A Not that I can recall, no. I didn't in that telephone conversation associate Doctor Stern with Satra.

Q I'm sorry. I did not hear that.

A I did not associate Doctor Stern with Satra.

O In that telephone conversation.

A No.

THE COURT: I am not sure what you mean by you didn't associate.

THE WITNESS: Because Mr. Jones gave me the slip that had Doctor Stern's name on it.

THE COURT: You mean in your own mind you didn't

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about.

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- O wou simply made a date?

Did you ask him what it was he wanted to discuss?

No. That's what I wanted to have a meeting

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	A	That's	right.	I	made	2	date,	and	that	was	it.
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Q You told him who you were and who you worked for?

A I told him who I was, I believe. It was such a short conversation, and Doctor Stern was so anxious to come and see me, I didn't see the point in carrying on a telephone conversation, because I really didn't know.

Mr. Jones had not briefed me at all as to who Mr. Stern,

Doctor Stern, is and what -- whom he was with.

- Q Okay. And the meeting took place?
- A Yes.
- Ω And this meeting took place in New York?
- A Yes.
 - Q Where did it take place?

A I believe a was a luncheon meeting at the Four Seasons Restaurant.

- O Who was in attendance at that meeting?
- A I'm not too sure. It was either myself and Doctor Stern alone or myself and Mr. Hendricks and Doctor Stern.
 - Q Mr. Oztemel was not in attendance?
- A Well, we went to see Mr. Oztemel, and this is, to the best of my recollection, right after lunch.

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O I didn't mean to interrupt.

A The lunch was strictly either the two or the three of us, and then Doctor Stern had made an arrangement for us to go over to Satra to meet with Mr. Oztemel and Mr. Giffen.

O Can you tell us as best you now recall what was said at that luncheon, who said what to whom?

A Doctor Stern, to the best of my recollection, told us his role in the Kama project.

Q What did he tell you was his role?

A Well, he told us, or told me, and I really can't remember how many of us were there, that he was very helpful in obtaining the export licenses, that he was working closely with Satra on the Kama project, and that Satra had good contacts, and that was vaguely it.

O Did he tell you anything about the business of Satra Corporation outside of the Kama project?

No.

O Subsequent to the lunch, you told us you went off to the Satra offices and met Mr. Oztemel?

A Right.

Q Now, other than Mr. Oztemel, was there anybody else from Satra at that meeting?

A I believe Mr.Giffen was there.

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- O Can you tell us what was said at that meeting?
- A Well, at that meeting Mr. Oztemel presented the capabilities of Satra. He didn't --
 - Q What did he tellyou about Satra, very briefly?
- A Well, he described to us about Satra, how it started, and that he buys a lot of chrome ore from the Soviet Union and he has the ability to do barters with the Soviet Union, which was something important to us, and that he serviced 30 or 40 large clients, large and small clients, what he did for them.
 - O What did he say about what he did for them?
- A He said he helped them get into business in Russia.
- Q Did he give you any details, such as hotels, visas, that kind of thing? Did he get into that?
- A That was discussed later. He said that was self-understood. Mr. Hendricks, who was with me, stressed this point very much, and it then became a major topic of conversation, although in my mind it wasn't as important as the contacts and barter aspects.
 - O The contacts and barter aspects?
 - A Yes.
- Q Was there anything said at this meeting with respect to a need on the part of IBM with respect to

- 11	656 A
1	11jgd Stafford-direct 591
2	additional systems management capabilities in doing business
3	in Russia?
4	A No, not that I can recall.
5	Q Do you recall anything else that was said at
6	this meeting?
7	A I believe at that meeting there were some pre-
8	liminary discussions as to if IBM chooses to work with
9	Satra, how would the two companies work together, what kind
	of a contract would there be, a consulting fee or just how
10	would it work, and both sides were going to think about it
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12	and come back together again. O Do you happen to recall whether at that point
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14	anybody in Satra delivered to you a form consulting agree-
15	ment that they used?
16	A No, not that I recall, no.
17	0 Was there anything said, if you recall, sir,
18	with respect to the role that Doctor Stern would play if any
	kind of an arrangement was reached between Satra and IBM?
19	discussed, no.
20	A That wash t discussed, and when did you next have a meeting, if you did,
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22	with Doctor Stern on the subject of IBM doing either busines
23	with Satra or with Russia?
24	A Well, after that first meeting there were many

meetings, not only on my part, but also on Mr. Hendricks'

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part and Mr. Hendricks and I worked very closely together and we both had powers reserved to be able to negotiate this kind of thing.

So there were a number of meetings; I couldn't say how many. The matter kept progressing. The meetings were with Doctor Stern and then they were with Doctor Stern and Mr. Giffen, and then I believe again with Mr. Oztemel. But I couldn't -- I couldn't recollect just how many meetings there were. Things moved relatively fast, would say, for a company like IBM.

O There was a letter of intent ultimately executed, which I think is dated September 17, and I'll show it to you in a minute, between IBM and Satra (handing).

A Yes.

O When, if you recall, was the decision made by IBM to enter into a contractual relationship with Satra?

A When this letter was written.

THE COURT: You mean that day?

THE WITNESS: Yes. That was the day, because Mr. Witham signed it. So that can be construed as a decision. A lot of processes led to the decision, but -
THE COURT: This is when the die was cast, is that it?

THE WITNESS: That's when the die was cast.

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O Prior to September 17, the date of that agreement, if you recall, did you ever have a discussion with Doctor Stern on the subject of his relationship with Satra?

A I can't recall any. There may have been, but I always considered Mr. Stern as being part of Satra, and it didn't matter to me one way or the other.

MR. FISHER: I move to strike the answer, your Honor. It is not responsive.

THE COURT: Yes. I will ask the jury to disregard what Mr. Stafford thought.

In any event, you don't recall having any of these discussions, is that right?

THE WITNESS: I don't.

- O Did there come a time when you learned of the nature of the relationship between Satra and Doctor Stern?
 - A Yes, I did, in Moscow.
 - O Do you recall when that was?
- A Well, it was during my first trip to Moscow in my new position, and that must have been, I believe,

 September '71; because the Leningrad Fair was October, so it was roughly in September '71.
- Refore we get to that, Mr. Stafford, do you recall a conversation in your office over the telephone between you and Mr. Oztemel, Mr. Oztemel being in Moscow?

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A Yes.

Q Was Doctor Stern present during that conversation?

A Yes. Well, wait. Sorry. I think he was. He was before and I don't know whether he was present during the conversation. I can't recall. But it was concerning Mr. Stern that that conversation took place.

Q Will you tell us first the circumstances, if there re circumstances, that led to that conversation?

And then tell us the conversation.

A I believe Doctor Stern came to my office and told me that somebody had called him up, and I don't recall who he said called him up, and said that he shouldn't go to Moscow with me on that trip.

MR.FISHER: I object and move to strike the testimony, your Honor. It is hearsay. It is inadmissible.

THE WITNESS: I didn't say hearsay. I just said
I didn't know who called Mr. Stern.

THE COURT: No, no, no.

Please let me rule, Mr. Stafford.

This background I don't think is necessary. I will sustain the objection.

No, I won't sustain the objection. I will simply tell the jury that obviously what Mr. Stafford has to

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Q Did you ever say to Dr. Stern that if he didn't go you wouldn't go?

MR. FISHER: I object. He is putting the words into the witness' mouth.

THE COURT: Overruled.

A I didn't say that.

Q Let's go back to Moscow, which is where you told us you first learned of the relationship between Dr. Stern and Satra.

Would you tell us from whom you learned it and what you learned? And if it came from a conversation, give us your best recollection.

that he feels it is only fair to tell me that he really isn't with Satra but that he had something like a joint venture or a piece of the action. I don't remember the words he used. Both of them were not relationships I was used to, and I was rather surprised and basically told him that really doesn't concern me, you know. But, you know, we engaged -- we, formally, IBM, engaged Satra to do a service for us. So what his relationship is is his problem.

Q Let's go back a little bit, Mr. Stafford. In the course of your m-etings with Dr. Stern, oh, we'll say

T COURT REPORTERS U.S. COURTHOUSE

up to September 17th, did you have any conversations with Dr. Stern with respect to his knowledge of the IBM computers, the line of computers?

A Oh, yes. We talked computerese to the extent that Dr. Stern could talk it. We talked more communication network techniques and systems management techniques, and in that atmosphere Dr. Stern made an excellent impression.

Q Did Dr. Stern ever say anything to you with respect to his knowledge of the IBM computers?

A Yes. He was very frank and said he didn't know IBM computers but he could pick it up very easily because of his background, study background. He told me that. We discussed that.

Q Did you have any discussions with Dr. Stern with respect to his knowledge of what I'll call the Russian market?

A Well, Dr. Stern volunteered some studies that were made on the requirements of the Russian market, which were rather thick studies. But after so many years in these countries I knew that such studies weren't of much value because even though somebody may need a thousand computers, if they have money for only one they only buy one.

So you can't really do market research in Eastern Europe.

THE COURT: I'm not sure I quite understand.
Who did such studies? Did he do it?

THE WITNESS: No. I believe it was the Rand Corporation. It was an existing study.

THE COURT: He brought it to your attention?

THE WITNESS: He brought it to my attention,

about the thousands of computers that would be needed in

Russia.

Q Did you have any other discussions with Dr.

Stern with respect to his own personal knowledge of the Russian market?

A It is an awfully general question. He had never been to Russia, he told me, so he didn't know the market that well. But he told me about all the Russians that he had met when they were here with Satra.

We had general discussions, but he did not tell me that he was an expert in the Russian market.

Q Back at the time that you learned of Satra, in the late spring or early summer of '71, did you ever mkae any efforts to learn anything about Satra and its business other than reading this article that you referred to in Der Spiegl?

A Let me get the timing. In my meeting with Mr. JOnes, I told him that I had an article here by a company that seems to know quite a bit about Russia, and in that same meeting Mr. Jones gave me that little slip. So there really wasn't any time.

I asked Mr. Jones whether I could investigate
Satra and its capabilities and he said, "Sure, go ahead."

At the end of the meeting he gave me that little slip and said, "Call this man up and see what he wants."

Q Did you, if you recall, prior to the meeting with Mr. Oztemel, which occurred sometime in the early part of Augus, ever make inquiries of anyone other than Mr. Stern -- Dr. Stern, on the subject of Satra?

A I didn't -Could you ask the question again?

o Sure.

Did you ever contact anybody other than Stern prior to your meeting with Oztemel to find out what Satil was all about?

A I never had the chance to, because I saw Jones on the day I came back from Europe with the article.

That's when I got the slip of paper. So it is a matter of time.

THE COURT: Excuse me, Mr. Stafford. I

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don't want to undercut what you said. But when you said you didn't have a chance to, you simply mean that events moved along fast, isn't that right? You could have.

THE WITNESS: I could have.

THE COURT: It was possible to do it.

THE WITNESS: It was impossible to do it, to check him, because they were there in a meeting with Mr. Stern.

THE COURT: No. I said it was possible. You could have, for example, suggested waiting a day or two and finding out in the meantime, could you not?

THE WITNESS: I could have, yes.

THE COURT: I take it you simply didn't feel in the circumstances that you needed to?

THE WITNESS: It was too early at this point. Subsequently, a check was made of Satra.

THE COURT: About when?

THE WITNESS: Well, prior to the signature of the contract, sometime between -- you know, some quite intensive checks were made.

THE COURT: I should think there would have been.
But I wasn't clear on that.

Q Mr. Stafford, did there come a time when you had a discussion with Mr. Giffen which was related to your Moscow conversation with Dr. Stern on the subject of

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CONTRERS DISTRICT COURT REPORTERS ILS COURTHOUSE

Stafford-direct

Stern's relationship with Satra?

A Yes. That was in Leningrad towards the end of the fair, when Mr. Giffen came to Leningrad.

Q Would you, as best you now recall, tell us the substance of that conversation?

A It was late at night and it was a tiring fair, but basically Mr. Giffen had asked me how I had met Dr. Stern, and I told him exactly the same story I just told in Court today, because that's how I met Dr. Stern.

Q Would you tell us, as best you now recall, what you said to Mr. Giffen and what Mr. Giffen said to you?

in Court: Mr. Jones handing me the slip of paper, my arranging a date with Dr. Stern, then going over to the Satra office. And from then on Mr. Giffen knew what happened thereafter because he was in on practically every meeting.

And Mr. Giffen then said, "Oh, my God. I thought Dr. Stern was so influential with IBM."

nay on that. My recollection of the meeting was I told
Mr. Giffen how I met Dr. Stern, which was no secret -
It wasn't IBM confidential, it was a pure fact -- and I did
not discuss with him any other matter, to the best of my
recollection.

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MR. HILL: I have no further questions.

CROSS-EXAMINATION

BY MR. FISHER:

Q Mr. Stafford, prior to September 22, 1971, which is the date that the actual contract was signed with IBM, prior to that date had anybody from Satra asked you anything about Dr. Stern?

A Not that I can recall, no.

Q The first time anyone asked you what you thought about Dr. Stern, how you came to meet Dr. Stern, was approximately a month later, in Russia?

A Right.

Q When Mr. Giffen came to you, is that correct?

A Right.

Q Did Dr. Stern ever tell you that Dr. Stern controlled IBM?

A No.

O Did he ever tell you, "I'm influential at IBM"?

A No. He threw around some names, but he did not say that he was influential with IBM, because he couldn't.

I would know whether he was or not.

Q Did you discuss Dr. Stern with Ambassador Llewelyn Thompson?

A Yes, I did.

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O Did you discuss Dr.Stern and Satra in the same conversation?

A Well, I went, on orders from Mr. Jones, to Ambassador Thompson on several matters, one of which was to ask for his opinion of Satra. This is one of the many checking-out procedures that we did. And asked about Satra, and he said he knew Mr. Oztemel, he knew of his reputation, and he had also met Dr. Stern on an airplnae and Dr. Stern told him that he was very active in the Kama project, so he assumed Dr. Stern was involved in the Kama project, and that was the extent of it.

He didn't know as much about Dr. Stern as he knew about Mr. Oztemel.

- Q Did you say you were employed as a consultant or an employee by the Satra Corporation between July '72 and August '73?
 - A An employee.
 - O An employee?
 - A Yes.
- Q President of Satra Industrical Corporation?

 Did there come a time, Mr. Stafford, when you recommended to one of your superiors at IBM that Dr. Stern be sent to IBM computer school?
 - A I recommended not only that Dr. Stern, I recommended

Exhibit RR states:

Moscow. It has top connections, an able type of staff.

There were upwards of ten Satra people in Moscow during my stay, all of whom made an excellent impression. The Messrs. Giffen, vice-president, and Stern, senior consultant, joined me during all my calls and were extremely helpful.

I feel it is essential that Mr. Giffen be enrolled in an TBM Executive School to familiarize himself with IBM equipment on a general basis, and Dr. Stern be enrolled in more detailed IBM courses as he will be very helpful in the systems management aspects of the Kama River and similar projects."

Signed "R. R. Stafford."

- Q Isn't it true, Mr. Stafford, that in 1970 Mr. Watson, who I believe -- was he president or chairman of the board of IBM Corporation?
 - A He was chairman of the board at that time, yes.
- Q In 1971, he, Mr. Katzenbach and other senior executive officers of IBM went to the Soviet Union?
- A They did. Whether it was '70 or '71 I don't remember any more. I believe, rather, it was 1970.
 - Q 1970?
 - A I believe so.
 - Q And was the purpose of the trip to explore

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Stafford-cross

possible future trade?

- A On a very, very rough basis.
- O And was that trip widely publicized?
- A Very much so. It was in all the papers.
- o In 1970.
 - A Yes.

and in May 1971, you say IBM decided to show at the Leningrad fair?

- A Yes.
- Q And was that publicized in the newspapers?
- A Yes, it was.
- Q So it wasn't a big secret that IBM was going to show at a trade fair and that was announced in May 1971.
 - A A very well-known secret.
 - O A well-known secret?
 - A It was in all the world press.
- Q And anyone who read those newspapers would have known that IBM was going to show at a trade fair for the purpose of sales to the Soviet Union.

on. People show at trade fairs without the purpose of sales, and, maybe it is not right in Court to volunteer this: I was in charge of answering all press questions on this Leningrad fair. When the Press asked, "Are you

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prepared to market in the Soviet Union?", my answer
was, "Providing that the conditions are equal to those in
the rest of the world or the places where IBM does
business."

So exhibiting at the Leningrad fair does not mean that IBM was ready to market on a large-scale basis.

Q I understand.

And was the equipment that was shown at the Leningrad fair in October 1971 actually sold to the Soviets?

A Yes, with modifications.

Q And isn't it correct that the first meeting you went to at which you met Mr. Oztemel you told him, "You look just like your pictures. I read about you in Der Spiegl"?

A That's correct.

MR. FISHER: I have no further questions.

THE COURT: All right. Thank you very much, Mr. Stafford.

(Witness excused.)

THE COURT: We will take an afternoon recess at this time.

(Recess.)

MR. HILL: The defendants call Mr. Ara Oztemel, your Honor.

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ARA OZTEMEL, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

> MR. HILL: May I proceed, your Honor? THE COURT: Yes, you may, Mr. Hill.

DIRECT EXAMINATION

BY MR. HILL:

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- Mr. Oztemel, where were you born?
- I was born in Istanbul, Turkey. A
 - When did you come to the United States? 0
- In 1945. A
 - Did you go to school here in the United States?
- Yes, sir. I went to Northeastern University in Boston.
 - Did you graduate from there? 0
 - Yes, sir.
 - From there you went to work?
 - From there I went to work, yes. Λ
 - Where did you work? 0
- From there I went to work for a Massachusetts company called Stone & Webster. After that I worked for a company called Polaroid. From there -- after, I lost my

of metallurgical products, other types of steel, other

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additives to steel and that slowly developed into steel itself, which we traded in, but all that time our primary source being the Soviet Union for the chrome ore. We were developing a larger and larger business with the Soviet Union.

On This larger and larger business, what did that

O This larger and larger business, what did that consist of, other than what you described as just a growth in the chrome business and the metal business?

A In addition to the growth of the chrome and other metallurgical business, it involved such things as some industrial products, electrodes, for instance. It involved even some consumer products.

THE COURT: Was that importation of these products or what, in regard to them? You didn't manufacture them?

THE WITNESS: No, sir. We were a trading company, basically. It was mostly exportation so far as some of the things I am talking about, but importation of chrome ore and other raw materials.

O So when you refer to exportation, you are talking about American products going to Russia?

A That's right, and raw materials coming back from Russia to the United States.

O Did there come a time when Satra started to

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engage in the business, if you like, of representing American companies in Russia?

A Yes, it did. That came at about the time

Mr. Giffen joined our organization and with him -- with his

background and his aptitudes I decided to try a concept that

I had been thinking of for a while, which was to help to

guide and basically to service large American corporations

to start their own activities in the Soviet Union.

O You used the word service. Would you describe to us what services were involved in representing these American companies?

That's a concept that is forever changing. At the time we started this concept it coincided with times when most American companies, especially large ones, had very little idea of the Soviet Union. They were even reluctant to travel in the Soviet Union. There were such things as their own personal safety they were concerned about, etc.

Now, we had been there a long time, so service at that time went basically as our literally holding their hands and taking them to the Soviet Union and making sure that they didn't get lost or arrested or anything like that.

THE COURT: You were sort of acting as a glorified travel agent?

THE WITNESS: In the beginning we were even that.

That function never stopped, your Honor, because since then

it has become quite a bit more sophisticated.

THE COURT: So I understand.

O How did this original babysitting operation develop thereafter?

A Well, as the corporations and their executives found their way to Moscow and other parts of the Soviet Union and got over their initial apprehension about what would happen to them personally, then, of course, the next step was to develop new business.

Now, that presented a much more complicated problem in which we were instrumental. For instance, the availability of funds with which they could buy American goods. For instance, contract interpretations, laws applying to basic concepts in the Soviet Union which are entirely different than ours, the drafting of the contract, shipping, etc.

O Could you give us, again, as briefly as you can, Mr. Oztemel, a description of what the Satra organization personnel-wise and indeed location wise consisted of as of about the end of 1970?

A In numbers, Mr. Hill?

Well, numbers and types of people which you had

roughly at what I call the executive or semi-executive level, if that means anything to you?

between 250 to 300 members, not only in the United States
but other parts of the world. Our staff consisted of
basically three or four categories. There were executives,
and the executives then again were broken down into
technical executives. There were legally oriented
executives, financially oriented executives, and then plainly
traders who did trading. Then, of course, there were the
accounting, clerical or manual.

O In 1970 where did you have offices other than New York?

- A I- 970 we had offices -- Satra and subsidiaries?
- Q And its subsidiaries, yes.

A I believe we had offices in the United States, various parts of the United States, certainly in New York and Washington. We had offices in Canada. We had offices in England. We had offices in Turkey, in South Africa.

- O What about Moscow?
- A We had physical offices there, yes.
- Q Can you describe the nature of these offices?

 THE COURT: What do you mean by physical offices?

 Do you mean you shared space with somebody?

the WITNESS: Your Honor, the Soviet Union,
because of the type of government, does not recognize
foreign entities doing business in the Soviet Union.

Eventually this became such a problem that they had a special provision which allowed for foreign entities to legally be there. We are now legally there, but at the time when this concept was still in the making we had physical offices, but legally we were not recognized as being there.

O These offices were in one of the hotels, weren't they?

A Yes, we had, I believe, three or four coms in a hotel that was called the Metropole. That's where the Chase Manhattan Bank is.

Q They were fitted up for offices?

A Yes, that's right.

Q I'm not sure you can even answer this question.

Over this period from 1960, let's say, to the end of 1970, could you give us any idea of the amount of trips you made to Russia?

MR. HELLERSTEIN: I don't think this makes a great deal of difference, your Honor. If he wants to testify I suppose it's all right.

THE COURT: I take it you don't dispute it?

MR. HELLERSTEIN: I assume he makes a lot of

for a period and then we may have then been joined by

Mr. Giffen or others, I don't recall.

O Could you tell me what happened at that meeting?

A Well, if I may, the things leading to that meeting was that Mr. Giffen had told me of Doctor Stern.

He had given me a brief background. He had told me that he himself was sufficiently impressed to want to make some arrangement with him, but would not --

O This was Mr. Giffen saying this?

A This was Mr. Giffen telling me, and would I meet'
with Doctor Stern to perform my own evaluation. I told him
I would be very pleased to, and so I did.

O What ha bened at this meeting?

A Well, we must have spent perhaps an hour or a little more with Doctor Stern discussing generalities; my telling him our business in general and he telling me his background, which was quite elaborate and very impressive.

Did anything result as a result of this conversation? Did anything happen?

A Well, Doctor Stern was telling me that he was quite well known in Washington. I remember almost literally his words, that he was a member of a few of the "fair-haired" boys that President Kennedy had brought to Washington, and through that he had built quite a reputation, especially in the technological field with the Defense Department.

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SOUTHERN DISTRICT COURT REPORTERS ILS COURTHOUSE

Oztemel-direct

At the time I had the distinct impression that Doctor Stern was talking to me in conjunction with Washington and what he could do for us in Wshington.

O Did anything else happen down there?

A No. I asked Doctor Stern if the financial terms that he had discussed with Mr. Giffen were satisfactory. He said yes.

Q Did you have any specific discussion with Doctor Stern in terms of what he was supposed to do for his compensation?

A That was certainly, I believe -- I had the impression that that had been discussed with Mr. Giffen prior to my talk with Doctor Stern, and certainly in describing what we were doing, or trying to do, certainly that was guite clear in both of our minds, and by that I mean Doctor Stern's very emphatically declared ability to communicate with the White House, especially with the technical staff who were able to understand, through Doctor Stern, the necessity of the trade with the Soviet Union, that to that extent he would be able to help us.

THE COURT: This was in relation to the Kama River project?

THE WITNESS: That is right, sir.

0 What happened thereafter with respect to this

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2 arrangement with Doctor Stern?

A May I hear that again, please?

O Sure.

What happened thereafter with respect to this relationship?

A I think, as far as I can recall, the relationship was in effect and as far as I knew Doctor Stern was expending his efforts as was discussed.

O Did there come a time that the subject of Doctor Stern's compensation in connection with this work was discussed with you again?

A Yes, Mr. Hill. I, of course, knew --

MR. HELLERSTEIN: Excuse me, your Honor. The question asked did there come a time and the answer was yes. I think it has been answered. I think at this point Mr. Hill ought to stop leading and get into the regular question and answer form.

THE COURT: The question may be answered, but I think Mr. Hill can ask for further information as to what the discussion was if he wishes.

O What was the discussion?

MR. HELLERSTEIN: I think he is supposed to set a time first, your Honor.

THE COURT: All right, would you set a time?

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	Ü	When	did	the	conversation	take	place,
Mr.	Oztemel	?					

A I would assume, Mr. Hill, because of the nature of the conversation, that it was two weeks and perhaps two days from the date that our relationship with Doctor Stern went into effect.

You referred to an assumption. What leads you to that assumption?

A Well, because I was aware --

MR. HELLERSTEIN: If your Honor please, I think the question is for his recollection, if the witness has any.

necessarily improper, but I think that Doctor Oztemel was about to give the answer when he was going to tell you about what the discussion was. Let's hear what the discussion was.

MR. HILL: Okay.

A The discussion was that the two weeks about which we had a relation with Doctor Stern having agreed to pay him \$5,000 for that two-week period had now ended. The discussion was, now that a few days had passed, perhaps two, perhaps three, I don't know how many, whether time was counting, or whether the cash register was still ringing at the rate of \$500 a day, which sort of alarmed us. So we

decided to have a talk with Doctor Stern to see what his understanding of our continuing relationship was.

Q Did you have that conversation with Doctor Stern?

A Yes, I did, and I'm quite sure that Doctor --Mr. Giffen was also present.

Q Would you try, as best you can, to fix a time for that conversation?

A I'm afraid I cannot, Mr. Hill. As I said, I have the clear impression that it was a few days after the 15 days had elapsed.

Q What was the conversation, as best you now recall?

A The conversation was that the 15 days had elapsed and, of course, our \$5,000 indebtedness had incurred to Doctor Stern. As I got into the discussion -- because obviously there had been some talk between Doctor Stern and Mr. Giffen. As I recall now, the dispute was that Doctor Stern clearly understood that his time now was running at the rate of \$500 a day and Mr. Giffen thought this was not reasonable.

Therefore, we were there to see if we could resolve this difference.

0 What happened?

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A What happened is that I believe it was my suggestion -- I told Doctor Stern that instead of wasting time discussing it, would he accept my concept or suggestion, which would be that he keeps on working indefinitely -- indefinitely meaning the deadline when our protocol would have just ended.

O When would that protocol have ended? This protocol you are talking about is the Kama River protocol?

A That's right.

Q Do you have any idea when that was supposed to end?

I can't recall, but the time was extremely limited. Perhaps 30, 45 days. I don't know. There was a time that if the pertinent export licenses were not obtained, thus putting the Kama project officially into an active form, that the project was abandoned. So, therefore, my suggestion to Mr. Stern was that why don't we keep working and if we are fortunate enough to be successful by that date, then he would receive \$25,000. If we did not, then he would receive a total of \$10,000 for his few weeks' work.

Q What did Doctor Stern say, if anything, in response to that?

A Well, Doctor Stern indicated to me that while he

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thought my suggestion was fair, nevertheless he was unhappy because he thought that somehow Mr. Giffen had accepted the concept of \$500 a day.

Q Was there any resolution of this at that meeting?

A The resolution was that we all parted friends with all kinds of enthusiasm to continue to work and the clear understanding was the he was to get \$10,000 or \$20,000 depending on the success.

paid, if you know, pursuant to -- well, when he was paid in connection with the Kama River project?

A Yes. I believe, as I have heard in the testimony, and I believe I understood that Doctor Stern was paid some time during August. He was paid the \$10,000.

O Did there come a time in August when Doctor
Stern discussed with you the subject of securing IBM as a
customer or a client of Satra?

A Yes.

Q Can you fix that in point of time?

A Well, I recall -- again having looked at prior testimony, I now recall that Doctor Stern, myself and Miss Van Stavern had dinner one night to discuss future prospects. Whether the concept of IBM was first brought up at that date or prior to that, I cannot tell you. I dc know

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that at that dinner it specifically did come up.

O Do you have any recollection of Doctor Stern ever mentioning the name prior to that dinner of Llewellyn Thompson to you?

A I have a clear recollection of Doctor Stern mentioning that name to me, but whether it was prior or after it, I truly cannot tell you.

THE COURT: I take it you knew the name before he mentioned it?

THE WITNESS: Your Honor, I have to admit somewhat embarrassment that I did not.

THE COURT: Really?

THE WITNESS: Although once he mentioned the Ambassador, I knew, but just the name I didn't know.

O Let me show you Plaintiff's Exhibit A, which is a document dated August 13, the memorandum of agreement.

THE COURT: This is A?

MR. HILL: Yes, your Honor.

Yes, sir.

Have you seen that document before?

I have.

Let's go back to the August 10 dinner meeting with Doctor Stern. Give us your best recollection of the substance of the conversations that took place at that

2 meeting.

A Doctor Stern told me that he was becoming somewnat discouraged with the prospects of the Kama River
project working at that time and he asked me if he might
just be very candid with me in telling me about his circumstances and his wishes and his plans. This was specifically
what the dinner was for, so he did tell me.

(Continued on page 624.)

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OGP 1 Oztemel - direct

Q What did they tell you?

A Dr. Stern told me that I perhaps -- he had created the wrong impression with me that he was a Washington man. He told me he was not; he was a technological man, who had made quite a reputation for himself in industry in such things as systems analysis, interfacing and some other words which I again am embarrassed to tell you, even though I am an engineer by education. I could not entirely understand either. It he told me that really what he wanted to do was to go back to industry and to the areas that he knew.

He furthermore told me that he had unfortunately speculated and lost \$250,000 the year before, which money was owed, and the interest was heavy.

He told me that he understood the reasons why the previous discussions regarding employment could not work, which involved salaries which were much larger than even mine, so we both knew that that could not work. So he asked me if I could not think of an area where we might find a way of working together.

I believe I told Dr. Stern -- because by that time Dr. Stern had had some difficulties, Mr. Hill -- I don't want to be derogatory or anything, but I always thought scientists were perhaps --

THE COURT: I think you are getting into territory

RGP 2 Oztemel - direct

which is not permissible in part.

THE WITNESS: This was part of the dinner, your Honor.

THE COURT: What your thoughts were is not admissible.

THE WITNESS: All right.

A (Continuing) I told Dr. Stern that I was a little concerned with our working relationship, because while I understood that as a scientist he had some unorthodox mannerisms and other habits, but nevertheless I would be very happy to have a man of his calibre associated with me so that we could work together.

Then we went on to defining what this mutual work would be. It came to the conclusion that with my knowledge of eastern markets and trade and with his ability and knowledge of sophisticated technology and his reputation and knowledge of highly technology-oriented United States companies, that we should be able to form a good partnership. This is the conclusion we came to. We both thought it was a good idea.

Now, how we were going to do this, I asked Dr.

Stern if he would put some thought together in a memorandum, which he did, and this is the document.

Q That is Plaintiff's Exhibit A?

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RGP 3 Oztemel - direct

A That's right.

Q In relation to the time that the dinner took place, do you recall how long after the dinner you saw that document for the first time? How long was it?

A I think it may have been one or two days.

Q Did you have a conversation with Dr. Stern about Plaintiff's Exhibit A when you got it?

A I am sure I did, Mr. Hill, because I recollect that as usual this is one of the areas where when we started or attempted to put numbers --

MR HELLERSTEIN: If your Honor please, I think that the witness ought to be cautioned to speak about conversations and not his own comments on the conversations.

THE COURT: I guess he is giving you the reasons why he believes that there was such a review, but if you recall that there was a review, Mr. Oztemel, give us your recollection.

THE WITNESS: Yes, your Honor.

A (Continuing) My recollection is that there came a time when Dr. Stern and I tried to put numbers in the blanks.

THE COURT: Of Exhibit A?

Of Plaintiff's Exhibit A?

Of Exhibit A, and we ran immediately into trouble.

RGP 4 Oztemel - direct

Q When you say you ran immediately into trouble, just tell us what was said that was trouble. What was said?

THE COURT: I guess one wanted a larger figure and the other wanted a smaller figure.

MR. HILL: I am not so sure that is right, your Honor, surprisingly enough.

THE WITNESS: I think, your Honor, if I may -THE COURT: Please go ahead. I didn't mean to
pre-empt you.

A There was always two figures, one of expenses and one of salaries. We would agree on one -- Let's say we agreed on a salary. Then Dr. Stern would ask me for an intolerable expense amount. So I would say, "Dr. Stern, I cannot give you that expense." Then he said, "You are renegeing." Then I said, "Perhaps I am renegeing, but if I am going to pay you that salary, I cannot pay you that expense."

Then I said, "Okay, I will pay you the expense," and then when we came to the salary, I said, "I cannot pay you the salary," and then he said I was renegeing again.

That is the way it went, and it was a lot of fun.

Q That discussion took place with respect to Plaintiff's A?

A Yes, among others.

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RGP 5 Oztemel - direct

Q We will get to the others shortly.

At this point in time, Mr. Oztemel, about the time Plaintiff's A came into existence, had you had a conversation with Dr. Stern on any occasion with respect to the possibility of IBM coming into the picture?

A Yes, Mr. Hill. In parallel with our discussions, arguments and et cetera regarding the type of relationship that we would have with Dr. Stern, parallel to that there was a discussion as to how we now do business, and I think the two names that I remember that came immediately under this category were IBM and Stromberg-Carlson.

Q Limiting ourselves to IBM and limiting ourselves to the period of time prior to the dinner on August 10th, can you tell me what you said and what -- First tell me what Dr. Stern said to you and what you said to him.

> THE COURT: This is before August 10th? MR. HILL: That is correct.

THE COURT: You were talking about the possiblity of IBM before August 10th?

MR. HILL: Yes.

THE COURT: I am asking the witness.

THE WITNESS: I don't specifically know if we had talked of IBM, although it may have been one of the companies. But Dr. Stern from time to time had come up with a number of

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RGP 6 Oztemel - direct

names of companies which had sophisticated technology with which we could work. Of course, as you all heard, Dr.

Stern had also established a connection between ourselves and Xerox Corporation.

Q Your reference to that is, you are really referring to testimony that is in the record. You have not testified about that here?

A No, sir.

Q Do you have any recollection that you met any representatives of IBM prior to the dinner meeting on August 10th?

A Prior; yes, I have often talked to IBM personnel who might be neighbors or friends. I have a college mate who works for IBM. So I have had some discussions with IBM.

Q Was the subject of those discussions ever the possibility of IBM going into the Russian market?

A My conclusion from all --

Q No. Don't give me your conclusion, but whether you discussed with any of these people you knew the possibility of IBM going into the Russian market.

A Well, the negotiation on the part of these people was in varying degrees, but again the final thing was that IBM would not under any circumstances consider going into the Soviet Union.

RGP 7

Oztemel - direct

MR. HELLERSTEIN: If your Honor please, I am not sure the witness answered Mr. Hill's question, because you asked him about conversations, and he replied about his conclusions.

MR. HILL: I am satisfied with the answer.

THE COURT: He answered it by implication, by implying that these people told him that IBM would not go into the Russian market; ergo, they must have been talking about whether IBM would go into the Russian market.

THE WITNESS: That's right.

Q If you can, Mr. Oztemel, can you fix a time of your most recent knowledge, if you like, to the effect that IBM would not go into the Russian market?

THE COURT: The most recent prior circumstance?

MR. HILL: Yes. Thank you, your Honor.

A Mr. Hill, I would say perhaps five months.

Q Was there an occasion prior to the dinner meeting on August 10th when you had a meeting with IBM people, where Dr. Stern was present?

A I would -- Unfortunately, I do not recollect the dates. Certainly, there were meetings that I had with IBM personnel when Dr. Stern was present, but whether they were before August 10th or after, I do not remember, sir.

Q Does it help you at all to look at Plaintiff's

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discussed?

A I don't believe so.

How was the subject left with Dr. Stern by you?
THE COURT: After the discussion?

MR. HILL: Yes.

A The subject was left in the state of perpetual discussions and disagreement, which went on every day, every hour, all the time.

The discussions went on all the time, as long as

I was at my office, and, of course, up to the time when

finally we did manage to draft a document, which Dr. Stern

and us approved.

THE COURT: That is the August 31st proposal?

THE WITNESS: That is right, sir.

- Q In the month of August, did you go to Russia?
- A I am sure I must have, Mr. Hill. I go there every month.
- Q Do you recall -- and if you have a recollection -- whether that trip followed this August 10th dinner?
- A It is quite likely, sir.
- Q Let me ask you to take a look at Plaintiff's

 Exhibit B. This is the memorandum agreement dated August 25,

 1971, and I ask you when you saw that document for the first

 time.

A I don't recall, but of course I recall -- I don't recall when I saw it for the first time, but I did see it.

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Oztemel - direct

Q Did this document come into existence as the result of discussions between yourself and Dr. Stern?

A nearly as I can remember, Mr. Hill, the document was the result of many discussions with Dr. Stern and myself, or with Dr. Stern and other members of my staff.

Q Did this document represent a proposal made by you to Dr. Stern or one made by him to you, if you can now tell us?

A No; I cannot.

Q If you recall, did there come a time subsequent to August 25th that Dr. Stern told you that he was prepared to accept that document as an agreement?

THE COURT: Accept Exhibit B?

MR. HILL: Yes, your Honor.

Q (Continuing) In words or substance.

A Truly, Mr. Hill, I could not tell you that. I don't recall.

Q Do you recall having a telephone conversation with Dr. Stern on the subject matter of Plaintiff's Exhibit B?

A I remember having a telephone conversation with Dr. Stern. I believe the conversation was over a week end, when he called me from California to say that he had accepted an agreement. Now, it could well have been this agreement, or it could have been another one. He accepted it -- We changed a lot of agreements, so I cannot tell you.

COUTHERN DISTRICT COURT REPORTERS, U.S. COURT HOUSE

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Nell, I'll just show you D, which is the first page, which is the document dated September 1, '71 addressed to Mr. Oztemel and signed by Dr. Stern, and it has attached to it what is a copy really of Plaintiff's Exhibit C. That is the August 31 agreement.

Did there come a time when you made the proposals contained in Plaintiff's Exhibit C to Dr. Stern?

A Well, there came a time, Mr. Hill, where Dr.

Stern and myself, and with the help of others in my organization --

O The others being whom, sir?

A The others? For instance, one that was quite active in this instance was Mr. Schloss. Mr. Mott was involved quite a bit.

O Anybody else that you can think of?

A I don't believe Mr. Giffen was much involved in these discussions. So the two I recollect were Mr. Mott and Mr. Schloss in trying to draft this agreement.

O And you've looked at that agreement in connection with preparing to testify here, haven't you?

A Have I seen this?

O Yes.

A Of course, yes.

1	JG 2	Oztemel-direct 63	5
2		O Does that agreement fairly present the proposals	5
3	that	were made by you to Dr. Stern on or about August 30th	17
4		A Yes, sir.	
5		Q Let me ask you this. Did you discuss those term	m:
6	with	Dr. Stern at or about the time this document was	
- 1	1		

A Very much so.

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O When you say "very much so," to the extent you can would you give us the amount of time that was expended in these discussions? Was it a matter of hours?

A Well, in the final stages of finally trying to put even this one together, it was a matter of hours, yes.

O Let me ask you specifically. Was there any discussions on the subject of expenses in connection with this document?

A Yes. It was one of the main topics of discussion.

O And, as best you now recall, what was the discussion with respect to expenses at which Dr. Stern was present?

A The discussions were that of course myself, but especially Mr. Schloss, who was a financial man and a very cautious one, were very apprehensive as to the kind of --

THE COURT: No.

MR. FISHER: If your Honor please --

THE COURT: Mr. Oztemel, if what you are saying

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to us now is what you said to Dr. Stern, it is all right.

THE WITNESS: Yes, sir.

THE COURT: And it is much easier for us to be sure if you said "I said" or "Mr. Schloss said" and "Dr. Stern said."

THE WITNESS: I told Dr. Stern that. During my first meeting with Dr. Stern and Mr. Stafford, I remembered Mr. Stafford telling both of us to be very careful in considering our overhead because IBM was such a large organization that they could eat us alive.

These words hung, and I repeated those to Dr.

Stern when we were discussing this thing, at which time

Mr. Schloss also intervened. And so the discussion of

expenses became quite heated and very much a part of our

discussions.

Now let me ask you to turn to the schedule which is attached to Plaintiff's Exhibit C. It is the last page of D. Tell me, if you will, whether that schedule itself was discussed with Dr. Stern in your presence, if you recall.

- A Very much so.
 - And what was that discussion?
- A Well, the discussion was that I had just told Dr.

 Stern about Mr. Stafford's comments, which he remembered

 himself, and both he and us were trying to establish, or

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guess, what would be a fair, an equitable amount of expense 2 to allocate which would be out of -- which would be there 3 no matter what happened. Whether there was any business 4 done or not, we knew that there would be some expenses.

Dr. Stern and I and Mr. Schloss, and off and on Mr. Mott, were trying to establish what would be a fair figure for that, and I believe eventually we came to the round figure of a hundred thousand dollars.

O That hundred thousand dollars then was, if I may use the word, the collective estimate of the group as to what it would cost Satra to service an agreement with IBM?

A That is correct. That was the figure. Even though there was nothing else, that we knew was going to have to be expended.

O And in the discussions with Dr. Stern then, what was said with respect to when he started to get something out of this relationship?

THE COURT: Was there any such discussion?

O Was there any such discussion as to, you know -let me withdraw that and try it another way.

Was there any discussion with Dr. Stern in terms of how the expenses would be charged against the revenues and how he was to share in the revenues as a result of the application of the schedule?

numbers that --

A Not much of a discussion still, because Dr.

Stern at that time was so convinced of the astronomical

MR. FISHER: If your Honor please --

THE COURT: Excuse me, Mr. Oztemel. If he said that to you --

THE WITNESS. Yes, he did.

THE COURT: What did he say to you?

THE WITNESS: Dr. Stern was telling us that we were looking at a minimum of \$50 million worth of business with IBM, which eventually he put in the contract.

THE COURT: But he didn't say, "And therefore
I don't care how this works," did he?

THE WITNESS: He wasn't worried about -- I'm sorry. He told us he was not worried about making money or his part of the commissions, but he told us he was concerned that the expenses we would deduct from this astronomical figure would be limited or under control, which eventually we tied to the schedule.

O And how did you tie it to the schedule?

A By starting from point zero, which was a hundred thousand, point zero income a hundred thousand and then going from there. But at some point -- we agreed that at some point the profits then would not justify further

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A Yes, there was.

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O What was that discussion?

A The discussion clearly --

THE COURT: Could you, insofar as possible,
tell us what you said or Mr. Giffen or whoever was there
said and what Dr. Stern said, instead of saying the discussion was?

THE WITNESS: I'm sorry.

THE COURT: This, as you know, is critical to both sides in this case.

A (Continuing) I told Dr. Stern that I had heard from Stafford during our first discussion that the orders normally that IBM receives were processed over a minimum of eighteen months and most of the time over two years.

that if tomorrow we were fortunate enough to receive an order on behalf of IBM from the Soviet Union, that it was going to be some two or three years before we realized any money and therefore that there would necessarily be some amounts spent in this period of time and that we certainly wanted to recoun those.

And as far as I remember, Dr. Stern certainly agreed.

Now, I also remember Mr. Schloss telling Dr.
Stern that we had a few months ago had had another experience where, in a similar arrangement, the expenses were just

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under the revenue, and he gave the example to Dr. Stern,
Mr. Schloss said to Dr. Stern:

"If next year we earn a hundred thousand dollars, and if our expenses are ninety thousand, we would not like you to come to us and say, 'Well, let's not deduct the full amount of expenses and we'll make it up next year.'"

He said, "We want to deduct the expenses every year."

And that was a part of this agreement. That's why we said expenses must be deducted every year, with which certainly Dr. Stern agreed.

- O There came a time when this document in its present form was signed by you, is that correct, sir?
 - A Yes, sir.
- Q Now, on the bottom of theschedule there is what appears to be a writing. Is that in your handwriting?
 - A That is my handwriting.
- O You placed that on the document and you signed it, is that right?
 - A I did.
- O At the time you put that on the document, did you have a conversation with Mr. Stern?
- A I just previous to that had a conversation with Dr. Stern, yes.
 - O And would you tell me that conversation as best

you now recall?

A Dr. Stern came to me with a request, and I think I remember some of his words, that although there was an agreement he was going to come to me asking a favor. And he said, he repeated again:

"I picked theterms myself together with you, but will you do me a favor? Because I have no other income. I need an income badly. Will you agree to pay me half of the retainers without a deduction of expenses?'

I told him I would.

O At this point in time, the point in time of this conversation, did you have any knowledge with respect to what theretainer might be from IBM?

A No, we did not.

O You had had no discussions with IBM with respect to that?

A I certainly had not.

MR. HILL: Your Honor mentioned that you had an appointment, and this would be a convenient time for me, your Honor.

THE COURT: I think it would.

I'm sorry, but I have to terminate. I am afraid I have no choice. We will resume again tomorrow afternoon at a quarter after two.



MARVIN STERN

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SATRA CORP. and SATRA CONSULTANT

> April 5, 1974 1:55 p.m.

(Trial resumed, jury present.)

ARA OZTEMEL, resumed.

MR. HILL: Your Honor, before I resume with

Mr. Oztemel, I would just like to point out that

Mrs. Van Staveren and Dr. Proehl are both in the courtroom.

DIRECT EXAMINATION (Continued)

BY MR. HILL:

Of yesterday, we had concluded with some testimony from you on the subject of your discussions of the expense schedule and the reference to the retainer and how that writing came to be put on Plaintiff's Exhibit C.

Let me take you back to a period prior to the execution of Plaintiff's Exhibit C, the August 31 document, and ask you this: if you recall, did you have any conversations with Dr. Stern on the subject of Satra personnel contacting IBM?

A Yes.

Will you tell us what those conversations with

Dr. Stern were?

MR. HELLERSTEIN: May we have the time, please, your Honor.

MR. HILL: I think I fixed that in terms of being prior to the execution of the August 31 document.

THE COURT: If you can fix it even more, it

would help.

Will you tell us, when you refer to a conversation, when it took place, to the best of your recollection?

A It could have been, let's say, between the 20th and the end of the month, coinciding with the discussions that Dr. Stern had initiated with IBM.

Dr. Stern came to me, I believe once or twice, and he asked me to instruct my people, more specifically Mr. Giffen and Mr. Mott, not to contact any of the IBM personnel directly. He said that he was in touch with them, he was doing well with them, and he told me that any contacts on the part of my staff directly with IBM might jeopardize the business at that time.

O Subsequent to August 31, the execution of the document, Plaintiff's Exhibit C, the August 31 document, did you have any conversations with Dr. Stern on the subject of representatives of Satra, Satra personnel, visiting with IBM?

after that. But I would not be able to tell you --

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THE WITNESS: Yes, your Monor, it was shortly

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THE COURT: That is sufficient.

Mr. Oztemel, during the course of the discussions which led to the execution of Plaintiff's Exhibit C, did you have any discussions with Dr. Stern on the subject of services to be rendered by him to Satra in the event an arrangement or agreement was reached with IBM?

A We had discussions regarding that.

O Can you tell us what those discussions were?

Also, to the extent you are able, fix them in point of time.

because it was the day when we signed the understanding, where we clearly and definitively discussed as to Dr. Stern's activities. The nature — once again, Dr. Stern, for reasons of his own, would not be explicit beyond the systems analysis, but he did tell me that the nature of his involvement would be to such an extent that it would certainly take all his time, and he felt that he should have at least two assistants helping him. And then he asked me whether the two assistants that he felt he should have should not be paid by Satra.

I told him that could possibly be so if the two assistants and, preferably, Dr. Stern, would make their office in New York with us, otherwise in California that he would have to take care of them himself.

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to had told me that this kind of decision, namely, a decision to work or not to work with the Soviet Union. basically rested with Mr. Watson.

Oztemel-direct

And when I told that to Dr. Stern, he told me that it was precisely that it was his ability to contact them to reach Mr. Watson. And while he did not elaborate, he did tell me that he knew, for instance, the Ambassador, Thompson, well enough to do that.

O Did he say anything to you, again prior to the execution of Plaintiff's Exhibit C, on the subject of his relationship with IBM and its possible impact on the future relationship between IBM and Satra?

A Well, his relationship with IBM was more in the field of theory or --

THE COURT: Are you telling us what he told you? THE WITNESS: Yes. I'm sorry, your Honor. I keep doing that.

Dr. Stern told me that his relationship with IBM was in the nature of sophisticated technology. In other words, that was what was common between himself and IBM. And while I believe he told me that he knew a number of their people who were at his level of technology, the one that he talked of most was the Ambassador, while telling me that his ability and his knowledge in the systems analysis

Oztemel-direct

specialty was essential to enable us to have a relationship with IBM.

THE COURT: I'm not quite clear on one point.

I don't know if you can answer it, Mr. Oztemel.

THE WITNESS: I will try.

THE COURT: According to your understanding, did Ambassador Thompson have a position of some sort with IBM at this time?

THE WITNESS: Dr. Stern told me that the Ambassador was very close to Mr. Watson and therefore Mr. Watson had a very open ear and that through that relationship that he would communicate with --

THE COURT: But Dr. Stern did not represent, and you did not have any information which led you to believe, that Ambassador Thompson actually was a functionary of IBM in any way, did he?

THE WITNESS: No, vour Honor. He didn't tell me anything one way or the other, no, sir.

THE COURT: And you didn't have any, you don't even now have any, such information, did you?

THE WITNESS: No.

MR. HILL: For the record, I would also like to mention that Mr. Schloss is in the courtroom. I thought your Honor and the jury would like to see what these people

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Oztemel-direct

BY MR. HILL:

Q Let's go on to the period after the 31st, Mr. Oztemel.

When, if you recall, was an agreement reached with IBM, or between IBM and Satra?

A I would not be able to be definite on that, Mr. Hill. Right after the conclusion of the document with Dr. Stein, I believe I had to go to the Soviet Union.

THE COURT: Isn't that agreed in the record?

MR. HILL: Yes, your Honor.

THE COURT: That it was September 22nd? Wasn't

MR. HELLERSTEIN: Yes, your Honor. Septem er 22,

I was not necessarily referring to the signed document.

But I was advised, either directly or through my people, that Dr. Stern was continuing his discussions with IBM and a series of understandings and agreements were being arrived at.

Q During this period -- this is what I was trying

to get at -- did you have any knowledge that anybody else

from Satra was in touch with IBM?

A Well, I had, following Dr. Stern's request,

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instructed my people not to contact IBM unless it was absolutely necessary, and even then I had asked them to do it through Dr. Stern.

Q Let me show you Plaintiff's Exhibit H, which is the agreement between Satra Corporation and IBM World Trade, and ask you if you can tell me when you first saw that document in its present form, if you ever have.

A I believe, Mr. Hill, that I first saw this document upon my return from the Soviet Union. Exactly when, I don't know.

Q Did there come a time subsequent to August 31st when you were in Dr. Stern's company in Moscow?

A [I don't believe Dr. Stern and I have ever been in Moscow together.

THE COURT: In other words, you were not there at the time that Mr. Giffen was there?

THE WITNESS: No, sir, I was not.

Q Did there come a time during the course of your stay in Moscow that you had a telephone conversation with Mr. Stafford, Mr. Stafford being in New York at that time, on the subject of Dr. Stern coming to Moscow?

A Yes, I did have such a telephone conversation.

Q Will you tell us what that conversation was, as best you recall?

Oztemel-direct

MR. HELLERSTEIN: If your Honor please, when Mr. Giffen was asked to testify to the conversation he said he had with Mr. Stafford, after a side bar conference your Honor allowed that testimony to come in.

Then we found out, when Mr. Stafford testified, that the conversation he said he had with Mr. Giffen was considerably less than Mr. Giffen said he heard. This exemplifies --

MR. HILL: Your Honor, this is argument to the jury.

THE COURT: I am a little puzzled. I don't think you need to refer to previous testimony. When the time comes, you can make whatever statement you want to the jury.

What is the objection now?

MR. HELLERSTEIN: A hearsay objection, your Honor.

THE COURT: Let me check with Mr. HIll to see whether he is trying to prove the truth of the contents of what is to be reported or not.

MR. HILL: I can say right now, no. I am simply trying to prove that the conversation occurred.

THE COURT: I don't think it is disputed that the conversation occurred, is it, Mr. Hellerstein?

720 A Oztemel-direct 1 jgmch 4 MR. HELLERSTEIN: It is not disputed, no. 2 Q Can you tell us what the conversation was? 3 A Yes. Mr. Stafford did call me in Moscow and told me that he had heard from Dr. Stern that I had asked 5 him not to come to Moscow, that is, I asked Dr. Stern not 6 7 to come to Moscow. 8 Then he asked me if I would allow him to come 9 to Moscow. And I told him that if he felt he should, then it was fine with me. 10 Q You mean if he, Stafford, felt he should? 11 That's right. 12 Q Let's move ahead in point of time. 13 Do you recall a meeting with Mr. Stafford and 14 Mr. Giffen in London in the fall of 1971? 15 Yes. 16 Would you tell us what happened at that meeting? 17 MR. HELLERSTEIN: I object on the ground of 18 hearsay, your Honor. The same point. 19 THE COURT: I'll give a proper instruction to the 20 jury. Otherwise the objection is overruled. 21

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A It was a dinner meeting with myself, Mr. Stafford and Mr. Giffen. When the conversation arose regarding Dr. Stern, Mr. Stafford told me that he felt compelled, I believe, to use his use of words, to put me straight

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Oztemel-direct

regarding some things concerning Dr. Stern.

And he proceeded to tell me that Dr. Stern was not known to him until he had received a call and returned a call; to the best of his knowledge among his colleagues in IBM World Trade Dr. Stern was not known; and, furthermore, that whatever knowledge or ability in the technical field Dr. Stern had wsa of no help to IBM's endeavors in the Soviet Union and, as a matter of fact, that was a touchy, in his own words again, point with IBM, and as a matter of fact, they would not be able to use Dr. Stern's services in the capacity of a systems analyst or whatever.

Q Do you recall anything else he said?

A On that subject, Mr. Hill, I don't believe much else was said.

Q Did there come a time, Mr. Oztemel, when you met with Dr. Stern subsequent to this meeting with Mr. Stafford when the subject of his continuing relationship with Satra was discussed?

A Did I have a meeting with Dr. Stern regarding that?

O Yes.

A There came a time soon after I learned from

Mr. Stafford of his views on it, and I had had several

discussions with Mr. Giffen and I had asked him to explore

the matter much more carefully and then report to me, and
after I received his report there came a time when I asked
to meet with Dr.Stern and approached him on the subject.

Q And would you tell us what happened at that meeting?

THE COURT: Was that back here in New York?
THE WITNESS: Yes, sir.

A At that meeting I told Dr. Stern, with some elaborations of how this matter had come to my attention, my conclusions --

Q What did you tell him about your conclusions?

A Well, I told Dr. Stern that I had entered into an agreement with him on some definite premises.

- Q Did you tell him what those premises were?
- A Yes, sir. I was just about to tell you.

The premises were, first of all, that he, Dr. Stern, would bring IBM to us and arrange a relationship between Satra and IBM. That he had done.

I told him I was not concerned as opposed to

Mr. Giffen, for instance, who was concerned as to have he
had arranged this introduction and the contract. I told

him that I was not really concerned how he did it. This
was his business. In our trade, when somebody promises to
bring either a source or a client or something, how he

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Oztemel-direct

does it is his business and to the point where I would consider it unethical to probe into his means.

So he had done that.

Now, the other part of my understanding and my agreement with him was that he would carry literally fifty percent of the load in servicing the IBM account and, using his own words, I reminded Dr. Stern that he had said without his presence and work that the contract with IBM was never possible.

I told him that I had now regretfully found that

I was misled and, therefore, regretfully I told him that

our relationship as it was had to stop. But I believe

I offered Dr. Stern to compensate for the first part of his

accomplishment, which was to bring IBM, and I believe

I offered him a choice of \$100,000 or the usually accepted

finders fee schedule.

Do you recall anything else that you said to him?

THE COURT: May I ask how the usually accepted

finders fee schedule would have operated?

THE WITNESS: It would have operated on the basis of income, your Honor.

THE COURT: A certain percentage?

THE WITNESS: A certain percentage. It would have been 5 percent of the first million, 4 percent of the

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Oztemel-direct

second, and so on.

arranged was alive.

THE COURT: I see.

THE WITNESS: And it would have continued indefinitely at a fixed level. It would have continued indefinitely as long as the contract which he had

THE COURT: Yes. That's what I mean, Mr. Oztemel.

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- Q Did Dr. Stern say anything to you, sir?
- A I believe, Mr. Hill, Dr. Stern started telling me things. I think we were getting, once again --
- Q Tell me what he said when the conversation started, as best you recall.

MR. HELLERSTEIN: Could you fix the time, please?

MR. HILL: It's at this same meeting, I take

it.

MR. HELLERSTEIN: Ask him.

A No, I would not recall at this time what Dr. Stern said specifically.

THE COURT: I don't want to press you unduly, but can you remember the general nature of his response?

THE WITNESS: Well, the general nature of his response was not certainly a total acceptance of what I was saying, but it was not a total negation, either. As I recollect now, we were getting -- we were beginning to talk about another arrangement, at which time I told Dr. Stern to please get counsel for himself and we will continue the discussions.

MR. HILL: Your Honor, I am about to star a new line which I suspect may require some discussion.

THE COURT: All right.

(At the side bar.)

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MR. HILL: Your Honor, I have the '73 contract here. It would be my intention to examine Mr. Oztemel on the circumstances and the background of the execution 4 5 of this contract. I believe it's relevant on a whole host of issues in the case, but, in particular, I think at 5 7 this point where damages isn't the case, it's relevant, 8 I think, if it's the contention of the plaintiff that 9 this document was entered into for the purposes of and indeed does thrwart Dr. Stern in his claim. In other 10 words, it was entered into to defeat whatever claim he 11 12 might have on the 1971 contract.

THE COURT: I am not quite sure whether it's the plaintiff's position that that was the purpose or whether although that might have been the purpose, it was an unsuccessful purpose and it's a mere continuation of the original agreement.

MR. HELLERSTEIN: That's correct, your Honor.

THE COURT: The latter?

MR. HELLERSTEIN: The latter, that we are entitled to the monies under it. I wouldn't also agree that damages is not in this case. It's something we haven't resolved.

MR. HILL: Let's deal with this first. If it's not the contention of the plaintiff -- well, let me withdraw that and put it another way.

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If the only position of the plaintiff is that this simply represents a "renewal" --

THE COURT: This is now the rule of the game?

MR. HILL: Yes, and if it's not an issue before this jury that this contract was entered into was sort of an evil motive, you know, in and of itself, I am not entitled to raise it.

THE COURT: I understand you will not argue that to the jury, that is, you will not argue that they entered into the '73 agreement for the purpose of damaging the plaintiff?

MR. HELLERSTEIN: That's correct, your Honor.

MR. HILL: Fine, your Honor.

(In open court.)

MR. HILL: I have no further questions of Mr. Oztemel.

CROSS-EXAMINATION

BY MR. HELLERSTEIN:

Q Mr. Oztemel, when Dr. Stern was no longer involved with Satra in connection with the IBM contract, who took over the servicing of IBM?

MR. HILL: Your Honor, excuse me. I have a problem with Mr. Hellerstein because I can't hear him.

THE COURT: I think we're going to have to ask you

to stand back there, Mr. Hellerstein.

Q When Dr. Stern was no longer involved with the servicing of the relationship between Satra and IBM, who took over the servicing of IBM?

A To the best of my recollection, there was nothing to take over from Dr. Stern because Dr. Stern had not done in the servicing anything active, but as to who was working with IBM, I think a number of people. Certainly, I was, Mr. Giffen was, and some of our consultant personnel.

Q Would it be fair to say that Mr. Giffen was the primary person involved?

A No. If we must find a primary person at that stage it would have to be me.

Q When you were traveling, which I gather was frequently, who was it?

A Well, you see, at that stage, once again, all the work that had to be done regarding IBM had to be done in Moscow where precisely I was. So I was the one contacting the necessary ministries, the necessary industries in the Soviet Union, and developing a relationship to be with IBM.

- Q As far as the Soviet ministries were concerned?
- A The various Soviet ministries and industries, yes.
- Q With respect to communications with the IBM

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offices back in New York, who was primarily involved in doing that? Was that Mr. Giffen?

A If there were indeed any communications, I suspect it would have been Mr. Giffen or perhaps, if the matter was more legal, it would have been Mr. Mott.

- Q After Mr. Giffen left the company, who took over?

 MR. HILL: Can we have a point in time for that,

 Mr. Hellerstein?
 - Q You can fix a point in time, Mr. Oztemel.

A When Mr. Giffen left, he left as the president -
I'm sorry, he left as vice-president of the corporation.

Before then, Dr. Proehl had taken over as president of

Satra Consultant Corporation. Under his direction, the

account was serviced by various members of the organization.

- Q You talked about a conversation you had in London with Mr. Stafford and I think Mr. Giffen.
 - A That's right.
 - Q Incidentally, where was that held, Mr. Oztemel?
 - A It was held in the dining room of Curzon Club.
 - Q Are you a member of that club?
 - A Yes, I am.
 - Q Is the membership a Satra membership?
 - A No, it's an individual membership.
 - Q You hold _ privately?

October 1971 Mr. Stafford volunteered to him a desire to leave IBM and join some consulting company?

MR. HILL: Your Honor, I am going to interrupt and ask if there is going to be any references to the earlier testimony in the case that it be referred to by a question and answer. I don't think it's fair to permit counsel to sum up the testimony, which the witness may or may not have heard; he may or may not have been listening to it.

THE COURT: Mr. Hill, I don't know that I am going to make everybody look at the record. If you disagree with the characterization of the testimony that was just given, for example, in this instance, then I will make counsel refer to the record.

MR. HILL: With all respect, your Honor, that is just the problem. I may diagree or agree, and I don't think that's really very relevant to whether or not the witness understands Mr. Giffen's testimony that way.

THE COURT: Let's put it this way. RAther than require a reference to the record which will be tedious,

I will ask counsel, you and Mr. Hellerstein, if you

are going to put questions of this sort, saying were you here when so-and-so testified --

MR. HILL: And does he remember his testimony to

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to so-and-so.

THE COURT: Yes.

Q Let me put the question to you, Mr. Oztemel:
Did you hear or do you recall any testimony that Mr.
Giffen gave here to the effect that while Mr. Stafford
was at IBM he had a conversation with Mr. Giffen expressing
a desire to leave IBM and join some consulting company?

A I heard up to the point where Mr. Giffen said
Dr. Stafford was not entirely happy with IBM, and that's
all I heard.

Q Did it enter your mind, Mr. Oztemel, when you had this conversation at the Curzon Club -- did it enter your mind that Mr. Stafford was perhaps gently suggesting to you that he might like to join your company?

MR. HILL: Objection, your Monor.

THE COURT: Overruled.

A Not even remotely. Mr. Stafford seemed to be a very energetically devoted person to IBM who was just raring to go and develop especially the Soviet business, so not even remotely.

Q How did you take this particular conversation, just as nostalgia or something of that nature?

A By that time I had some several contacts with

IBM and with my previous knowledge, I know the sensitivity

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of IBM regarding certain points. So when Mr. Stafford
approached me, saying "I want to clear this point with you,"

it didn't come to me as a surprise. I took it that he

was making sure that in no way IBM was involved in a case

where somebody had misrepresented the situation.

I am not sure I understand your answer, but that's not really important.

Let me put the question again:

When Mr. Stafford was telling you of certain restlessness about his employment at IBM, would that be a fair way of characterizing it?

A He was not telling me anything like that at all. I told you that I heard from Mr. Giffen that at some point Mr. Stafford had said that. Mr. Stafford never told me anything like that.

Q Did you pursue what Mr. Giffen had told you with Mr. Stafford?

A I heard that perhaps for the first time in Mr. Giffen's testimony. He had not told me that Mr. Stafford had told him he was unhappy.

Oh, you mean you had not heard this back in the Curzon Club, he did not tell you this?

A No. At the Curzon Club Mr. Stafford told me about clearing the situation so far as Dr. Stern was concerned,

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and then we talked about other things, but not his company life or any other kind of life.

Q In other words, the first time you heard anything of this suggestion that I put in my previous question was when you heard Mr. Giffen testify here?

A I'm sorry, I must correct that because there came a time when Mr. Stafford and I had luncheon at the Harvard Club, Yale Club, one of those, when he told me that he was resigning from IBM and that he was looking for a situation.

- Q Was his resignation voluntary?
- A As far as I know, yes, sir.
- Q He was then looking. What time was that? What period of time was that, Mr. Oztemel?
 - I'm sorry.
- Q That was the first you had any inkling of the desire on Mr. Stafford's part for one reason or another to move away from IBM to some other company?
 - A As far as I can remember, yes, sir.
- Q So when you and Mr. Giffen and Mr. Stafford had this conversation in London concerning Dr. Stern, you had no idea whatever that Mr. Stafford was thinking that he might want to leave IBM?
 - A As far as I can remember now, I did not.

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yes.

Q On what subject was he putting you straight?

he was putting the record straight, he was telling me that if I had any understanding that there was a relationship between IBM and Dr. Stern, or that IBM would make representations to anybody, including Dr. Stern, that they would not enter into a contract with a third party or a second party without the existance of somebody like Dr. Stern.

He wanted to make sure that this was not the truth and this was not acceptable to IBM, and he felt that I must know.

Q You didn't think that Dr. Stern and IBM had a contractual relationship while Dr. Stern was supposed to be your partner, did you?

A I certainly didn't think that they had a contractual relationship, no.

O That would be a wrongful act, wouldn't it, if Dr. Stern had a relationship -- a contract of IBM while he was supposed to be your partner?

A It all depends on the contract. If he rented a computer from IBM, I certainly wouldn't have objected.

Q It all depended. But you didn't think when Mr. Stafford was saying this that he was talking about some contractual relationship between IBM and Dr. Stern?

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2	A No. I believe you misunderstood me. Mr.
3	Stafford never said that.
4	Q You were talking about a record of some sort
5	that Dr. Stern had a relationship with IBM. What kind
6	of a relationship did you mean?
7	A If indeed I said I used the word "relationship"
8	and I don't
9	Q You can change the word. We won't hold you to
10	the word.
11	What did he say, as you best can recall?
12	A What did Dr. Stern say to me or what did Mr.
13	Stafford say?
14	Q What did Stafford say to you at this time to
15	set you straight?
16	A Mr. Stafford said he understood from Mr.Giffen
17	that Dr. Stern had presented to us that, first of all, a
18	relationship a contract between IBM and Satra was
19	not possible without the existence of Dr. Stern.
20	Ω Who said that, Stafford?
21	A Stafford said that.

THE COURT: I understand Stafford said that he had been cold that Stern had said that? THE WITNESS: That's right.

Q In other words, somebody said to Stafford that

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Stern had said that there could never have been a Satra-IBM relationship without Dr. Stern?

A Well, Dr. Stern had told us that. Now, somehow Mr. Stafford found out what Dr. Stern had been telling us for a long time.

Q Do you know how he found out?

A Well, one way he could have found out is through his conversation with Mr. Giffen, unless -- well, I will not summarize. I was going to say unless Dr. Stern approached Mr. Stafford on the same question.

Q Let me ask you this question, Mr. Oztarel: Did you or Giffen say to Mr. Stafford, in words or substance, "You know, we have got this contract with Stern where we have to pay him 50 percent of whatever we make. Does he deserve that?" Did you ever ask that question in some way?

I did not. A

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